Supreme Court, U.S.
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No. 08-_____

In the
Supreme Court of the United States

Jon Gallant
Petitioner

v.

Terri Lynn Gallant,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Issue I: Does the due process clause of the 14th Amendment bar a state court from enforcing a divorce judgment predicated on arithmetic errors or on facts completely unsupported by the record evidence, where respondent demanded an equal division of the marital estate, and the trial court, applying Michigan law, properly determined that an equal division of the marital estate is warranted under all the circumstances, a finding upheld by the Michigan appellate judiciary, but the division of the marital estate is in fact grossly unequal, to the point that petitioner has been burdened with lifelong obligations of support which exceed his earning capacity, condemning him to forever live in abject poverty?

Issue II: Did the Michigan judiciary violate the supremacy clause, US Const, art VI, cl. 2, by awarding respondent the child dependency deduction for federal income tax purposes for tax year 2004 contrary to Treas. Reg. 1.21-4(d)(3) and by declaring that non-support provisions of the divorce judgment shall not be dischargeable in bankruptcy contrary to 11 USC §727(b) and 28 USC §1334(a) and (e), where exclusive jurisdiction over dischargeability determinations lies in the federal bankruptcy courts?

LIST OF PARTIES AND RULE 29.6 STATEMENT

The petitioner is Jon Gallant, Jr.. The parties to the state proceedings at issue were Jon Gallant, Jr., Teri Gallant, Jon Gallant, Sr., and Gallant Transport, Inc., a Michigan corporation wholly owned by Jon Gallant, Sr. and Jon Gallant, Jr.

There are no other corporations, limited liability companies, partnerships, limited partnerships, or juristic entities that are parties to this case. All natural persons party to this case are listed in the above paragraph.

There is no parent or publicly held company owning 10% or more of the stock of Gallant Transport, Inc.

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OPINIONS BELOW

The Michigan Supreme Court's order of March 24, 2008 denying leave to appeal is reported at 480 Mich 1134; 745 NW2d 783 (2008), and reproduced in Petitioner's Appendix A ("Pet Apx A"), Pet Apx 1a.

The Michigan Supreme Court's order of September 9, 2008 denying rehearing is officially reported at 482 Mich ___; 755 NW2d 171 (2008), and is reproduced at Pet Apx 3a (Appendix B).

The Michigan Court of Appeals decision issued June 21, 2007 is unreported (but found at 2007 Westlaw 1791713), and is reproduced at Pet Apx 5a (Appendix C).

The unreported Michigan Court of Appeals' order denying rehearing, issued August 21, 2007, is reproduced at Pet Apx 15a (Appendix D).

The Jackson (Michigan) circuit court's Amended Judgment of Divorce of September 7, 2005, is unreported, and is reproduced at Pet Apx 21a (Appendix E).

The Jackson (Michigan) circuit court's unreported Amended Findings of Fact dated June 27, 2005, are reproduced at Pet Apx 30a (Appendix F).

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment entered by the Michigan Court of Appeals on June

21, 2007 in this case, as to which the Michigan Supreme Court has refused discretionary review.

JURISDICTION

The Michigan Supreme Court denied petitioner's timely application for leave to appeal raising the within federal constitutional and federal statutory issues on March 24, 2008, and denied petitioner's timely motion for rehearing on September 9, 2008. The jurisdiction of this Court is based on 28 USC §1257(a) and Rule 13.1.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the construction and application of the due process clause of §1 of the Fourteenth Amendment of the Constitution of the United States, Pet Apx 182a, (Appendix P), as well as the Supremacy Clause, US Const, art VI, cl. 2 (Pet Apx O), the pre-2005 versions of the dependency deduction provision of the Internal Revenue Code, 26 USC §152(d) and Treas. Reg §1.152-4(d)(3) (Pet Apx S), the discharge provision of the Bankruptcy Code, 11 USC §727(b) (Pet Apx Q, 183a), and the exclusive jurisdiction of the federal judiciary over bankruptcy issues, 28 USC §1334(a) and (e)(1) (Pet Apx R, 184a).

STATEMENT

INTRODUCTION

Petitioner Jon Andrew Gallant, Jr. requests review by certiorari of a March 24, 2008 order of the Michigan Supreme Court (Pet Apx 1a), denying discretionary review (leave to appeal) from a June 21, 2007 decision of the Michigan Court of Appeals

(Pet Apx 5a-19a), as to which a timely motion for rehearing was denied by order of August 21, 2007 (Pet Apx 20a). The Michigan Court of Appeals affirmed the Jackson County (Michigan) circuit court's property division in this divorce proceeding, including the allocation of child dependency deductions for tax year 2004 and a declaration of non-dischargeability of non-support provisions of the divorce judgment.

FACTS AND PROCEDURAL BACKGROUND

This lawsuit began as a simple divorce case with the filing of Teri Gallant's complaint in 2003. Divorce was initially granted by order of January 6, 2005. At the time Respondent initiated this divorce action in 2003, she was 42 years of age and Petitioner was 48 years old. Both parties were then, and remain, in good health. They had been married 21 years, and produced six children, of whom three remained minors when the case was filed (and one remains so).

A two-day trial was held in this matter on September 16 and 17, 2004. The marital estate was ultimately determined by the trial court to consist of the marital home, petitioner's 401(k) plan, and the three (3) business entities that petitioner and his father own in equal shares, to wit:

(1) J & J Real Estate Partnership
(2) Gallant Transport, Inc.
(3) Gallant Industrial Services, Inc.

The principal issue at trial concerned the value of

Petitioner's businesses[1]. Both the transport and industrial service enterprises are closely tied to Michigan's automobile industry; the real estate partnership merely owns the land occupied by the other two businesses. Business revenue and profit had been spiraling downward, to the point that respondent's own business valuation expert (Mr. Dupke) concluded that the value of Gallant Industrial is "zero" (Pet Apx 143a). Further, Dupke indicated that Gallant Industrial actually has a liquidation value of *minus* $143,000 (Pet Apx 151a, 153a).

The parties' joint and individual income tax returns and the corporate and partnership income tax returns—none of which was challenged by any witness (the Court of Appeals allowed that "[u]ncontroverted testimony established that defendant's income dropped precipitously in 2002 and 2003", Pet. Apx. 10a)—all reflect the devastating economic effect changes in the business environment were having long before this divorce action was initiated by respondent in June, 2003. The undisputed evidence is that in 2002 (*a year before the divorce*), petitioner's income, *including both salary and profit* from his half of the three businesses was just $30288, dropping to $8554 in 2003 and

[1] Particular testimony will be referenced as it becomes relevant to the arguments presented. In the end, the trial court averaged the valuations of the competing experts as to two businesses and adopted the valuation of petitioner's expert as to the third, and there is no dispute over the values thus assigned. Constitutional error arose in implementing those findings.

rising to $44781 in 2004[2].

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[2] The parties' 2002 joint federal Tax Return (Respondent's trial exhibit 4)—signed by both parties under penalty of perjury—showed salary of $25,000 and total earnings from partnerships and S corporations of $5,288; interest and dividends (excluding S corporation dividends, which are separately taxed as profit whether paid or not) brought their total taxable income up to $32,623 (there is no record evidence of any non-taxable income). The 2003 tax return (Respondent's trial exhibit 4A) reflects salary of only $16,000, with total earnings from partnerships and S corporations of **minus** $7446, with net taxable income of $11,069. The 2004 tax return shows that Petitioner's salary increased to $29,000 with income from partnerships and S corporations of $15,781, with net taxable income of $43,750. (Corporate returns prepared by the businesses' CPA, none of which was challenged for accuracy or verisimilitude by any witness, support the diminution in income and profit.

Note that, although the trial court relied on an offhand remark by respondent's expert Mr. Dupke (Pet Apx 141a) that petitioner could in theory control his level of salary from companies of which he is half owner, the notion that petitioner's taxable income was somehow subject to his whim or control was wrong as a matter of federal law. It is undisputed that petitioner's three businesses include one real estate partnership and two Subchapter S corporations. Such "pass through" enterprises pay no income taxes; instead, partnerships and Subchapter S corporations issue a Form K-1 to each partner/shareholder, on which is reflected that partner's/shareholder's pro rata share of any profit generated in proportion to their interests. If such an enterprise generates revenue that is not consumed by salaries to owners or other expenses, all such profit is passed through to the owners on their K-1s as income (IRS Form 1040, line 17), and taxed to them individually, whether or not any portion thereof is retained for a business purpose rather than distributed. 26 USC §1366(a)(1); *Gitlitz v CIR*, 531 US 206, 209; 121 S Ct 701; 148 L Ed 2d 613 (2001), citing *Bufferd v Commissioner*, 506 US 523, 525; 113 S Ct 927; 122 L Ed 2d 306 (1993). As the accuracy of petitioner's federal income tax returns was never in issue, attribution to petitioner of additional income or "earning

In 2000, petitioner's wages/salaries totaled $169,000.00, and in 2001, they were $174,000.00. However, in 2002, a year prior to respondent's filing for divorce and after Gallant Industrial lost its largest customer, petitioner's wages/salaries plummeted to only $25,000.00.[3] His wages/salaries in 2003 were only $16,000.00. In 2004, his wages/salaries improved to $29,000.00, but still far below the $174,000.00 he earned in 2001.

Child support was stipulated by the parties and judicially approved in the amount of $800/month for three (3) children, which amount exceeds Michigan's child support guidelines (Pet Apx 140a) for petitioner's income level, as the trial court noted in its Amended JOD (Pet Apx 25a-26a): "This amount, however, does exceed the guidelines, based on the parties' income information submitted at trial."

At the conclusion of trial, the trial judge directed the parties to present closing arguments in writing, and gave each party three (3) weeks to submit proposed findings of fact and law. (Pet Apx 161a).

Petitioner timely filed and served his Proposed Findings of Fact and Conclusions of Law on October 8, 2004. Respondent tardily filed and served her Proposed Findings of Fact and Conclusions of Law ("Respondent's Brief") on November 17, 2004,

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potential" proves to be without foundation in law or fact.

[3] The following year, respondent filed for divorce just as her husband was coping with saving the business enterprises that were the primary financial support of the family.

incorporating new information not introduced at trial (and to which Petitioner had no opportunity for cross-examination or rebuttal).

Although the trial court acknowledged the untimeliness of Respondent's Brief, it accepted and reassured Petitioner that it would not be influenced by any arguments that were not supported by the record:

> The Court: All right. Thank you. All right. Well, I'm going to certainly strike anything in his [respondent's counsel's] responsive pleadings that is not borne out and supported by evidence during the trial, and I think I have about 2 and a half legal pads full of notes that I took during the trial. (Pet Apx 165a-166a)

On December 21, 2004, the trial court issued its Findings of Fact and Conclusions of Law ("Initial Findings"), in which it determined that the marital estate should be equally divided (Petitioner's Appendix H). However, after determining the value of each of petitioner's businesses, it calculated the marital estate value without dividing those values in half in recognition of the fact petitioner had only a 50% interest in each business. It also ordered $700/month in rehabilitative alimony for a period of five (5) years.

In those Initial Findings, it is evident that the trial court did rely upon and was persuaded by certain statements and contentions made in Respondent's Brief that were not supported by the

record, in consequence of which it assigned an interest to Respondent in certain key-man life insurance policies owned by two (2) separate business entities of which Petitioner is only a 50% owner (Pet Apx 135a). Respondent's post-trial brief argued that the trial court could award her an interest in these policies despite the fact that they are not owned by Petitioner but by two (2) separate corporate entities (and, thus, non-marital in nature[4]). The trial court not only relied upon this unsubstantiated argument, it awarded Respondent a 50% interest in each of those policies (even though Respondent only requested that she be awarded a 25% interest in those policies[5]), which policies are discussed in greater detail below.

On January 6, 2005, a Judgment of Divorce prepared by Respondent's counsel ("the original JOD", Appendix G), was entered over the objections of Petitioner (Pet Apx 173a, 174a). Petitioner timely filed a Motion for Reconsideration on January 20, 2005, making the following arguments *inter alia*:

(i) the Judgment of Divorce unlawfully awarded to Respondent an interest in certain "key-man insurance" policies on the lives of Petitioner and

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[4] More importantly, the value of such insurance was taken into account in valuing both corporations, and thus in calculating the value to the marital estate of Petitioner's 50% interest in each corporation (Pet. Apx. 160a).

[5] Which would have been consistent with the trial court's stated intention of awarding each party half the marital estate, if Petitioner's half-interest in each corporation meant that such insurance policies had been putative marital assets not already valued as part of the valuation of each corporation.

Petitioner's father that were purchased and owned by corporations of which Petitioner is only a fifty percent (50%) stockholder;[6]

(ii) the Judgment of Divorce failed to address the tax treatment of the five (5) years of rehabilitative alimony awarded to Respondent; and

(iii) the Judgment of Divorce contained provisions that were inconsistent with the Initial Findings.

Petitioner's Motion for Reconsideration pointed out that, even assuming the trial court had jurisdiction to award fifty percent (50%) of said policies to Respondent, doing so would result in a "double dip" into the value of the corporations otherwise awarded to Petitioner: as the key-man insurance policies were owned by the corporations, each expert's valuation of the corporations necessarily took into account the value of these policies (Pet Apx 160a). In awarding to Petitioner

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[6] There are four (4) policies, which cumulatively had a face value of $2 million on January 1, 2003 (with cash surrender value on that date of $61,000 total, which has been exhausted by being applied to continue the insurance at an annual premium cost of $36,000 per the Amended Judgment of Divorce, (Pet Apx 36a-37a). Gallant Industrial Services, Inc., owns two and Gallant Transport, Inc. owns two; one pair insures the life of Petitioner and the other pair insures the life of Petitioner's father. Of course, Respondent has no insurable interest in the life of either Petitioner or his father, and an award to her of life insurance on either would be contrary to public policy, which wisely eschews permitting anyone to have a financial incentive to hasten the demise of a former spouse or former father-in-law. See Mich Comp L §552.101(2).

his fifty-percent (50%) ownership in these corporations, the trial court necessarily calculated the value of these corporations against Petitioner's share of the marital estate. Therefore, awarding any interest in these policies to Respondent, even if permissible, would result in an inequitable and unequal division of the martial estate.

The Motion for Reconsideration also pointed out that while the trial court stated in its Initial Findings that the reason for awarding an interest to Respondent in those policies was to "preserve the Petitioner's ability to pay both child support and alimony," requiring these policies to be maintained actually had the opposite effect. The premiums on these policies had been paid in the past from the remaining cash surrender value of each policy. If required to be maintained in effect, once the cash surrender value was exhausted, the corporations would be forced to dip into their revenues to pay the premiums. This would result in Petitioner receiving less income and, therefore, impair his already limited ability to pay child support and alimony. Further, the annual premiums for these policies total more than $36,000 and yet Petitioner's combined obligation for child support and alimony is only $18,000/year.

The corporate entities that own the key-man insurance policies and Petitioner's father, who is the beneficiary of certain of those policies, were forced to bring a motion to intervene to challenge the trial court's jurisdiction to make determinations affecting their interests in the key-man insurance policies.

At a hearing on April 14, 2005, the trial court ruled that it had erred in granting to Respondent any interest in the key-man policies:

> The Court: . . . So, I'll make a ruling at this point. I'm going to make a ruling that the Court should not have considered those corporate policies as a[n] [ap]portionable marital asset. (Pet Apx 177a-178a)

The trial court then indicated that, unless the parties were able to settle the matter by May 9, 2005, it would equitably reapportion the marital estate (Pet Apx 179a-180a).

On June 27, 2005, the trial court issued its "Final Order and Conclusions of Law After Divorce Trial and Motion for Reconsideration and to Pay Marital Expenses Incurred Between 09/21/04 to Date of Entry of Judgment of Divorce" (hereinafter the "Final Findings", Appendix F). In its Final Findings (Pet Apx 59a, the trial court stated:

> The Court legally erred in concluding that one-half of these [key-man insurance] policies created an interest in the [Petitioner] individually, which were part of the marital estate. The life insurance policies owned by Gallant Industrial Services, Inc. and Gallant Transport, Inc. They are not owned individually or severally in any capacity by the [Petitioner].

> Pursuant to the arguments of the [Petitioner] and the Intervenors, the Court legally erred in not determining that these life insurance policies were "key-man insurance" which are kept in place to provide the corporate insurer [(*sic*) enterprise] with the liquidity and ability to purchase its stock back from a deceased shareholder.

In its Final Findings, the trial court stated that it was again awarding each party one-half the marital estate. However, the trial court reallocated the marital estate and greatly increased Petitioner's alimony obligation, the terms of which were incorporated into an Amended Judgment of Divorce ("the Amended JOD", Appendix E) that was entered, again over Petitioner's objections, on September 7, 2005. Despite determining it had no jurisdiction to award an interest in the key-man life insurance policies to respondent, the trial court without explanation increased petitioner's alimony obligation by requiring him to pay respondent's medical, prescription, optical and dental insurance *for the rest of her life*, or until such time as she obtains employment or has comparable insurance she can obtain at a reasonable price through her employment or through the government when she becomes eligible (Pet Apx 35a). Further, the trial court ordered that petitioner secure his child support, alimony, and health insurance obligations by purchasing life and disability insurance.

The Amended JOD changed the original JOD in several significant respects:

(a) Respondent's share of Petitioner's 401(k) was dramatically increased: the original JOD awarded Respondent $211,459.33, whereas the Amended JOD gives her $318,876.81 (Pet Apx 47a-48a). In addition to the increased award to Respondent, she was awarded any and all increases in the value of the entire 401(k) plan, which accrued between July 13, 2004, and the date of segregation by the Plan Provider[7] (Pet Apx 48a-49a). The implementing QDRO was entered September 8, 2005.

(b) Unlike the original JOD, the Amended JOD requires Petitioner to maintain and pay for Respondent's insurance policies to cover her medical, prescription, optical and dental needs for the rest of her life, "or until such time as she obtains employment which provides comparable insurance that she can obtain at a reasonable price through her employment, or until such time as she is eligible for same through the government." (Pet Apx 35a) **This obligation does not cease even if Respondent should remarry.**

(c) The Amended JOD requires Petitioner to carry a life insurance policy on his life with a face value equivalent to the sum of his child support obligation of $800 per month currently for three

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[7] Segregation occurred on January 26, 2006, at which time the interest and earnings on the 401(k) from July 13, 2004 to January 26, 2006 amounted to $114,296.50, of which half was immediately put in respondent's name and half held in escrow pending appeal (and recently released to respondent).

children, plus his cash alimony obligation of $700/month for 5 years commencing January 6, 2005, plus the cost of all health care coverages he is required to provide and maintain for Respondent, including medical insurance, potentially for the rest of her life (the cost of which is not capable of being determined – see September 19, 2005 letter from Walton Agency (Appendix S, Pet Apx 186a). No similar provision appears within the original JOD.

(d) The Amended JOD further requires (Pet Apx 36a) Petitioner to secure, at his undetermined expense, "disability policy(ies), on a declining balance, to secure his obligation to pay alimony in the amount of $700.00 per month for five (5) years beginning January 6, 2005, child support in the amount of $800.00 per month, and the cost of all of the health care coverages which the Petitioner is required to provide and maintain for the Respondent as set forth herein." The original JOD contained no such requirement.

(e) The Amended JOD (Pet Apx 39a) awards respondent the child dependency deduction for federal income tax purposes for tax year 2004 (and all subsequent tax years, which is not challenged here due to an amendment to the Internal Revenue Code for tax years 2005 and beyond).

(f) The Amended JOD (Pet Apx 38a) declares that non-support provisions of the judgment shall be non-dischargeable in bankruptcy.

In the end, respondent was awarded more than 62% of the marital estate, and an even larger percentage of total marital income going forward. Respondent's award of $464,745.81 was comprised of $145,869 net equity in the marital home, and $318,876.81 from her share of petitioner's 401(k) savings. That amount does not include the further award to respondent of all interest and earnings on the 401(k) from the date of the Original JOD to the date of segregation (1/26/06), another $114,296.50. Nor does that reflect the award to respondent of "marital" expenses from September 21, 2004 to August 5, 2005 amounting to approximately an additional $32,000 (more than a year's earnings for petitioner). Her actual total (excluding "marital expenses") is thus $578,942.31.

In contrast, petitioner's supposedly "equal" share was comprised of $10,000 as the value of Gallant Industrial Services, $214,835 for Gallant Transport, Inc., $70,000 for J & J Real Estate, and $169,910.81 as the remainder of his 401(k) account. Those figures were supposed to reflect one-half the value of each business, based on petitioner's half–interest in each one. And those numbers do indeed add up to $464,745.81.

That calculation, however, reflects a fundamental arithmetical error by the trial court[8]—the trial court

[8] Respondent's own counsel conceded that the property division was the product of an obvious arithmetical error, and the trial court agreed (Pet. Apx 170a-171a). The original JOD reflected correction of that error (except as to Gallant Industrial, but that

found that the *total* value of Gallant Industrial Services is $10,000 (Pet Apx 69a) and that the *total* value of Gallant Transport is $214,835 (Pet Apx 70a). But it is undisputed that petitioner only owns a one-half interest in each business (Pet. Apx. 6a), so petitioner's award of marital property is actually $112,417.50 *below* the $464,745.81 intended, leaving the parties with grossly disparate awards ($578,942.31 to $352,328.31, or 62.16693% to 37.83307%) which flatly contradicts the trial court's stated intent to equally divide the marital estate (Pet Apx 75a).

The Michigan Court of Appeals recognized the trial court's corporate valuation error in its June 21, 2007 decision (Pet Apx 11a, Appendix C), but wrongly asserted that the trial court corrected the error in an order of January 5, 2005[9]. Whatever the provisions of the January 5/6, 2005 order, they were superseded by the trial court's September 7, 2005 Amended Judgment of Divorce, where the trial court again awarded respondent $318,876.81 from petitioner's 401(k) (Pet Apx 47a-48a). Respondent also was awarded the entire $114,296.50 in interest accrued in the 401(k) account between July 12, 2004 and the date of segregation (Pet Apx 48a-49a). The Michigan Court of Appeals' affirmance means that

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error was only $5000), awarding respondent only $211,459.31 from the 401(k) plan. Yet the error was nonetheless resurrected in the final judgment, which awards her $318,876.81 instead.

[9] There was no order entered on January 5, 2005; the Original JOD was entered on January 6 and did correct the arithmetic error, but that correction was superseded, and the error revived, in the Amended JOD entered September 7, 2005.

the $112,417.50 error, plus $114,296.50 in interest and earnings in the 401(k) plan, now go to respondent, leaving an intended equal division of the marital estate grossly skewed in her favor.

REASONS FOR GRANTING THE PETITION

Divorce probably represents, if not the single most common type of civil litigation in the courts of the various states, then something very close to it. With nearly half of all marriages ending in divorce, 11% of American adults currently divorced, and 25% of American adults having had at least one divorce during their lifetime[10], that the parties to divorce actions must have their due process rights to liberty and property protected and preserved is manifest. Moreover, because everything owned by married persons, and all of each spouse's future earnings, may be subject to division and allocation in the event of a divorce, the notion that federal due process principles put some limit on the wide discretion generally exercised by divorce courts under state law is not only of the utmost significance to our national jurisprudence, but to the economic welfare of our society.

Meanwhile, three States (California, Massachusetts, and Connecticut) now allow and recognize

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[10] Barna Research Group, Dec. 21, 1999 (based on a study of 3,854 American adults), reporting accuracy to ±2%). The Census Bureau reports that 23.1% of all U.S. residents over the age of 15 have been divorced, based on 2001 data from 30,000 households. Rose M. Kreider, *Number, Timing and Duration of Marriages and Divorces: 2001*, Current Population Reports, Pub. 70-97, US Census Bureau, Washington, DC (February, 2005), Table 3.

marriages between persons of the same gender, while a growing number of states (Hawaii, Maine, Maryland, New Jersey, New Hampshire, Oregon, Vermont and Washington) and the District of Columbia permit civil unions for persons of the same gender. A panoply of foreign countries[11] permit same-sex unions, which must be recognized by the United States and the several states as a matter of comity or treaty obligation when their citizens sojourn in our midst. Hence, the importance of federal due process to divorce or equivalent separations will only increase.

Thus, this case, which presents just the kind of errors—mistakes of arithmetic and the making of findings of fact without any supporting evidence—to which federal due process principles usefully apply, comes to this Court as both a suitable vehicle for addressing the constitutional issue and at an opportune time in our nation's history for clarifying such constitutional limitations on an area of jurisprudence traditionally viewed as primarily of state and not federal concern.

Issue I: The due process clause of the 14th Amendment bars a state court from enforcing a divorce judgment predicated on arithmetic errors or

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[11] Countries with amicable relations with the United States which currently recognize same-sex unions include Andorra, Argentina, Australia, Belgium, Brazil, Canada, Colombia, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay.

on facts completely unsupported by the record evidence, where respondent demanded an equal division of the marital estate, and the trial court, applying Michigan law, properly determined that an equal division of the marital estate is warranted under all the circumstances, a finding upheld by the Michigan appellate judiciary, but the division of the marital estate is in fact grossly unequal, to the point that petitioner has been burdened with lifelong obligations of support which exceed his earning capacity, condemning him to forever live in abject poverty.

ISSUE PRESERVATION

The record reflects that the arithmetic and evidentiary errors which, when ignored, engendered the due process issue were raised and addressed in the trial court, as well as in the Court of Appeals, which both sufficiently presented the issue and preserved the issue for appeal under both state law, *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992), and federal law, *First English Evangelical Lutheran Church of Glendale v Los Angeles*, 482 US 304, 313 n. 8; 107 S Ct 2378, 2385 n. 8; 96 L Ed 2d 250 (1987). In any event, a Michigan court is empowered to go beyond the issues raised and address any issue that, in the court's opinion, justice requires be considered and resolved. *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999).

Further, as the Michigan Court of Appeals itself has repeatedly held, "the trial court was bound to follow the law, notwithstanding the fact that it was

not called to the court's attention." *People v Glover*, 47 Mich App 454, 458; 209 NW2d 533 (1973). Here, of course, the due process issue was called to the trial court's attention prior to the entry of final judgment once its errors were manifested; nothing further was required to preserve these issues for appeal even under state law. *Adam v Sylvan Glynn Golf Course, supra*, 197 Mich App at 98.

ANALYSIS

This issue presents a question as to the application of federal constitutional law. Pursuant to US Const, Amendment 14, §1 (Appendix P, Pet Apx 182a), no State may deprive any person of liberty or property without due process of law.

Michigan law is clear that marital property divisions and spousal support determinations must produce "rough congruence" absent fault or other justification for disparity, *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994), and when the trial court in this case, after a trial, itself found that an equal division was the proper outcome, allowing a grossly unequal division of the marital estate, and an absurdly one-sided division of income, to stand deprives Petitioner of his property in violation of his due process rights under both US Const, Amend 14, §1, which precludes any determination in civil actions not supported by a modicum of actual evidence. *In re Japanese Electronic Products,* 723 F2d 238, 304, n. 55 (CA 3, 1983)[12], citing *Vachon v*

[12] Rev'd on other grounds *sub nom Matsushita Electric Industrial Co v Zenith Radio Corp,* 475 US 574; 106 S Ct 1348; 89 L Ed 2d 538 (1986).

New Hampshire, 414 US 478, 479-480; 94 S Ct 664; 38 L Ed 2d 666 (1974) and *Thompson v Louisville*, 362 US 199; 80 S Ct 624; 4 L Ed 2d 654 (1960); *Spruytte v Walters*, 753 F2d 498, 508-509 (CA6, 1985).

Indeed, even where there is some evidence to support a determination, if such evidence becomes insubstantial in the face of contrary evidence, then due process forbids a finding based on insubstantial supporting evidence. *Schware v Bd of Law Examiners of State of New Mexico*, 353 US 232, 246-247; 77 S Ct 752; 1 L Ed 2d 796 (1957). And it must be borne in mind that the state of Michigan exercises a monopoly over divorce; all aspects of a divorce must be judicially sanctioned before any part of the divorce is official, and parties may not be divorced privately. *Boddie v Connecticut*, 401 US 371, 375-376; 91 S Ct 780; 28 L Ed 2d 113 (1981). Also, even where the parties agree on aspects of a divorce, in Michigan discretionary judicial approval remains necessary before any judgment effectuating such private agreements can be entered. *Greene v Greene*, 357 Mich 196, 202; 98 NW2d 519 (1959); *Harvey v Harvey*, 470 Mich 186, 188 ff; 680 NW2d 835 (2004).

Where, as here, respondent bore the burden of proof on all claims as to the value of the marital estate, what would constitute a fair division of that estate, and the amount of petitioner's actual income and what would be fair in the way of spousal support given petitioner's child support obligations, due process nonetheless bars a judgment that is based on no evidence whatsoever, or which is contrary to all

the *competent* substantive evidence. As was remarked in *TXO Production Corp v Alliance Resources Corp*, 509 US 443, 471; 113 S Ct 2711; 125 L Ed 2d 366 (1993), (Scalia and Thomas, JJ. concurring):

> Procedural due process also requires, I am certain, judicial review of the sufficiency of the evidence to sustain a civil jury verdict, and judicial review of the reasonableness of jury-awarded compensatory damages (including damages for pain and suffering); * * *

Although this case was tried to the bench rather than a jury, the due process clause does not allow judges more leeway to rule in defiance of a factual basis, still less in a manner contrary to elementary principles of arithmetic. *Justices of Boston Mun Ct v Lydon*, 466 US 294, 310-311; 104 S Ct 1805; 80 L Ed 2d 311 (1984)[13].

In its present posture, this case stands as an

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[13] While this Court has definitively demanded independent judicial evaluation of the sufficiency of the evidence in relation to a trier of fact's determination that proof meeting the legal standard has been adduced to support every element of a criminal offense, even on collateral federal review, *Jackson v Virginia*, 443 US 307, 316-319; 99 S Ct 2781; 61 L Ed 2d 560 (1979), to date it has not, in a majority decision, expressed such a sentiment in relation to civil cases, although the due process clause of the 14th Amendment applies equally to deprivations of liberty as to property. Given the unavailability of collateral federal review in civil matters, it is all the more crucially important that this Court not close its doors or abandon its sacred duty to those seeking due process on their only chance for direct federal review in civil matters.

egregious exemplar of gross injustice that surpasses the obscene. Even respondent's counsel conceded the arithmetical error that led to a significantly disparate property division [TR 12/22/04, pp. 4-5]. The alimony award violates the fundamental tenet of Michigan divorce jurisprudence that neither party be left impoverished by a divorce decree, especially where as here fault is not an issue. *Moore v Moore,* 242 Mich App 652, 654; 619 NW2d 723 (2000). The trial court also clearly erred in imposing a variety of insurance obligations—health, life, and disability *inter alia*—on petitioner without calculating their actual cost or value, and without factoring in petitioner's ability to pay. *United States v Rylander,* 460 US 752, 757; 103 S Ct 1548, 1552; 75 L Ed 2d 521 (1983); *Shillitani v United States,* 384 US 364, 371; 86 S Ct 1531, 1536; 16 L Ed 2d 622 (1966).

Respondent's own expert, Mr. Dupke, acknowledged that transportation is a business that does not generate "huge profits", and that Gallant Transportation is an underperforming company in terms of the profit generated for the assets invested (Pet Apx 148a-149a), while Gallant Industrial is completely moribund (*id.*, Pet Apx 145a) and has *negative equity* of $172,982 (*id.*, p. 110). That "underperformance" is a product of a "tough market" (Dupke's phrasing, *id.*, p. 95) for transportation services, as detailed in the trial record (Pet Apx 150a). Any reliance on the notion that petitioner's future earnings/profits may return to earlier levels is entirely speculative, equivalent to "condemnation without trial" and the antithesis of the fair determination essential to due process. *Ohio Bell*

Telephone Co v Public Utility Comm'n, 301 US 292, 300; 57 S Ct 724, 728; 81 L Ed 1093 (1937).

Here, the undisputed evidence is that in 2002 (*a year before the divorce*), defendant's total income, *including both salary and profit* from his three businesses (Gallant Industrial Services, Inc., J & J Real Estate, and Gallant Transportation, Inc.), was just $30288, dropping to $8554 in 2003 and rising to $44781 in 2004[14]. From this meager **pre-tax** income, defendant must pay $800 per month in child support, $700 per month in alimony, and $400 per month (rising 10+% per year) in additional alimony (Amended Judgment, p. 13) by way of health insurance premiums for respondent, and $42 annually to the Michigan Friend of the Court, or $22,842 annually, plus the ruinous cost of insurance premiums for life and disability insurance to cover future alimony, health insurance, and child support in the event of his death[15] or disability. For 2002,

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[14] The parties' 2002 *joint* federal Tax Return—which both parties signed under penalty of perjury—showed salary of $25,000 and total earnings from partnerships and S corporations of $5,288; interest and dividends (excluding S corporation dividends, which are separately taxed as profit whether paid or not) brought their total taxable income up to $32,623 (there is no record evidence of any non-taxable income). The 2003 tax return reflects salary of only $16,000, with total earnings from partnerships and S corporations of **minus** $7446, with net taxable income of $11,069. The 2004 tax return showed that petitioner's salary increased to $29,000 with income from partnerships and S corporations of $15,781, yielding net taxable income of $43,750.

[15] The cost of such insurance would be in the range of $20,000 per year, notwithstanding that, if defendant dies, his obligation to pay alimony or child support dies with him. *Kurz v Kurz*,

this would have left petitioner (*before* taxes and not including life and disability insurance premiums) with $9,781 for himself, **minus** $11,773 for 2003, and $20,908 for 2004, or a three year total, *before* taxes, of $18916 ($6305.33 per year). From this, petitioner must provide housing for himself and his minor children (so he can enjoy his parenting rights, including 156+ overnights), food, transportation, etc.—while respondent enjoys a $192,000 house (with a mere $43000 mortgage) to cover her housing needs.

Issue II: The Michigan judiciary violated the supremacy clause, US Const, art VI, cl. 2, by awarding respondent the child dependency deduction for federal income tax purposes for tax year 2004 and by declaring that non-support provisions of the divorce judgment shall not be dischargeable in bankruptcy, where exclusive jurisdiction over dischargeability determinations lies in the federal bankruptcy courts.

ISSUE PRESERVATION

The dependency deduction award and non-dischargeability declaration were raised as issues both on petitioner's appeal of right to the Michigan Court of Appeals (which ignored the issues), and again in petitioner's application for leave to appeal to the Michigan Supreme Court, which both sufficiently

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178 Mich App 284, 297; 443 NW2d 782 (1989)(alimony); *Smith v John Hancock Life Ins Co*, 65 Mich App 193, 196; 237 NW2d 244 (1975) (child support); *Merchant v Merchant*, 130 Mich App 566, 574; 343 NW2d 620 (1983) (child support). Nonetheless, petitioner may be charged with contempt of court for failing to provide such insurance.

presented the issue and preserved the issue for appeal under state law, *Adam v Sylvan Glynn Golf Course, supra,* 197 Mich App at 98, as well as under federal law, *First English Evangelical Lutheran Church of Glendale v Los Angeles, supra,* 482 US at 313 n. 8. Under Michigan law, Petitioner was not required to move for new trial in order to raise such issues on his appeal of right. *Bunda v Hardwick,* 376 Mich 640, 672; 138 NW2d 305 (1965). Additionally, under both Michigan and federal appeal and error jurisprudence, whether the lower court(s) had proper subject matter jurisdiction may be raised at any time, and need not be preserved. *Fox v Bd of Regents of Univ of Mich,* 375 Mich 238, 242-243; 134 NW2d 146 (1965); *United States v One 1985 Cadillac Seville,* 866 F2d 1142, 1145 (9th Cir, 1989); *Allen v Secretary of Health and Human Services,* 781 F2d 92, 94 (6th Cir, 1986).

ANALYSIS

Generally, "State courts possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law". *ASARCO Inc v Kadish,* 490 US 605, 617; 109 S Ct 2037, 2045; 104 L Ed 2d 696 (1989). But for that very reason, to avoid federal legal rights being applied differently in all fifty states, or as here being completely denied without any direct federal judicial involvement, Congress has wisely assured that this national Supreme Court is endowed with jurisdiction to review any state court judgment that involves any title, right, privilege or immunity based on federal statute. 28 USC §1257(a).

The Michigan courts first violated the supremacy clause, US Const, Art VI, cl. 2 (Pet Apx 181a), by awarding Respondent the child dependency and tax credit deductions for federal income tax purposes for the 2004 tax year, contrary to 26 USC §152(d)[16] and Treas Regs §1-152-4(d)(3) (2004 version, Pet Apx 185a). Only this Court on direct review may be positioned to prevent the Michigan courts from usurping petitioner's federal statutory right (due to res judicata in any collateral tax filing) to claim the federal income tax child dependency exemptions based on his being the parent providing the majority of each minor child's support in 2003 and 2004.

Similarly, the Michigan judiciary exceeded its authority and contravened the supremacy clause, US Const, Art VI, cl. 2, by arrogating to itself the power to declare the non-dischargeability of non-support provisions of the judgment (Pet Apx 38a). What debts are dischargeable under the Bankruptcy Code, USC Title 11, is a matter of purely federal law. *Brown v Felsen*, 442 US 127, 134-135; 99 S Ct 2005; 60 L Ed 2d 767 (1979); *Gionis v Wayne (In re Gionis)*, 170 Bankruptcy Rptr 675, 681 (9th Cir BAP 1994); HR Rep No 595, 95th Cong, 2d sess., 364, reprinted in 1978 US Code Cong and Admin News 5787, 6320; see also *Bardes v First Nat'l Bank*, 178 US 524, 532; 20 S

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[16] The 2004 Working Families Tax Relief Act, Pub L 108-311,§201, amended 26 USC §152 by adding §152(C)(1)(B) and (c)(4)(B), which replaced the support test with a place of abode test, which favors respondent for tax years beginning on or after January 1, 2005. See also the current versions of 26 USC §152(e)(4)(A) and Treas Regs §1.21-1(b)(5)(ii).

Ct 100; 44 L Ed 1175 (1900). And the jurisdiction of the federal bankruptcy courts under 11 USC §§727(b) (Pet Apx 183a) and 28 USC §1334(a) and (3) (Pet Apx 184a) is exclusive. *Tennessee Student Assistance Corp v Hood*, 541 US 440, 447; 124 S Ct 1905; 158 L Ed 2d 764 (2004).

The Michigan judiciary's declaration of non-dischargeability is also substantively erroneous, being contrary to the plain terms of 11 USC §§ 727(b) (Pet Apx 183a), which declares that a discharge "discharges the debtor from all debts that arose before the date of the order for relief under this chapter" "except as provided in section 523 of this title) and 523(a)(5) (which precludes discharge only of a "domestic support obligation". This creates a conflict with *In re Jodoin*, 209 Bankruptcy Rptr 132, 137-138 (9th Cir BAP, 1997), which powerfully supports granting certiorari.

This Court has recently recognized that it simply cannot continue to encourage lower courts to ignore the law by denying certiorari as a relinquishment of its error-correcting powers, or accept mere lip service to controlling federal law or federal constitutional principles as sufficient grounds for lower courts to evade further review. Where facts are found that, on proper analysis, are without requisite record support, resulting judgments cannot be allowed to stand if the independent judiciary is to fulfill its assigned role in protecting fundamental rights. *Snyder v Louisiana*, ___ US ___; 128 S Ct 1203, 1208 ff; 170 L Ed 2d 175 (No. 06-10119, decided March 19, 2008); see also *Agostini v Felton*, 521 US 203, 237; 117 S Ct 1997;

138 L Ed 2d 1396 (1997). In this case, likewise, this Court must invoke its error-correcting powers lest the lower courts regard inaction as a continuing license to disregard controlling requirements of due process under the federal constitution or the controlling provisions of federal law.

CONCLUSION

At the end of the day, where the lower courts' first concluded that an equal division of the marital estate was fair and equitable, but then, through arithmetic error and speculation, awarded more than 63% of the marital estate and a still larger share of marital income to respondent, saddling petitioner with alimony, child support, and insurance obligations to the point he is left homeless and impoverished, while facing the burden of insuring respondent's health for her lifetime (potentially even after his own has ended) must be reversed and the following relief be granted:

1. The marital estate should be equitably divided in accordance with the trial court's unchallenged original findings on a true 50/50 basis with respondent awarded $211,459.33 of the 401(k), plus no more than a pro rata share of all interest or market increases until actual division of this asset (segregation by the plan administrator);
2. Elimination of any post-original JOD obligation by petitioner to pay for medical, dental, optical and prescription coverage for respondent;
3. Elimination of any obligation by petitioner to secure his obligations for alimony (including the premiums for the various health care coverages

for respondent's benefit) and child support by means of both life and disability insurance;

4. Removal of any direction regarding the parties' 2004 income taxes, including childcare deductions;

5. Removal of any declaration that non-support provisions of the Amended JOD are non-dischargeable in bankruptcy.

For the foregoing reasons, petitioner Jon Andrew Gallant, Jr. respectfully prays that his petition for certiorari be granted, or alternatively, pursuant to Supreme Court Rule 16.1, that the Court summarily reverse the lower court orders in this cause and direct that a division of the marital estate be made that accords with respondent's demand and the trial court's finding that an equal division is proper.

Respectfully submitted

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Supreme Court, U.S.
FILED

08-662 NOV 14 2008

OFFICE OF THE CLERK
William K. Suter, Clerk

112

No. 08-

In the
Supreme Court of the United States

Jon Gallant
Petitioner

v.

Terri Lynn Gallant,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ALLAN FALK (P13278)
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Order
Entered: March 24, 2003

134902(95)

TERI LYNN GALLANT
Plaintiff-Appellee,

v

JON ANDREW GALLANT, JR.,
Defendant-Appellant,

and

GALLANT TRANS-PORT,INC. and JON ANDREW GALLANT, SR.,
Defendant/Intervenor-Appellee.

/

Michigan Supreme Court
Lansing, Michigan
Clifford W. Taylor,
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 134902
COA: 265396
Jackson CC: 03-002034-DM

On order of the Court, the application for leave to appeal the June 21, 2007 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

Michigan Sup Court Order 3/24/2008 **Appendix A**

March 24, 2008 /s/ Inger Z. Mayer

Deputy Clerk

Order

September 9, 2008

Michigan Supreme Court
Lansing, Michigan

Clifford W. Taylor,
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

134902 (95)

TERI LYNN GALLANT,
Plaintiff-Appellee,

V

JON ANDREW GALLANT,
Defendant-Appellant,

and

SC: 1134902
COA: 265396
Jackson CC: 99-002099-DM

GALLANT TRANS-PORT, INC., and
JON ANDREW GALLANT, SR.,
Defendant/Intervenor-Appellee.

_____/

On order of the Court, the motion for reconsideration of this Court's order of March 24, 2008 order is considered, and it is DENIED because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at

the direction of the Court.

Sept. 9, 2008 /s/ Corbin R. Davis
Clerk

STATE OF MICHIGAN
COURT OF APPEALS

TERI LYNN GALLANT,
UNPUBLISHED
Plaintiff-Appellee,

v

June 21, 2007
No. 265396
Jackson Circuit Court
LC No. 03-002034-DM

JON ANDREW GALLANT, JR.,
Defendant-Appellant,

and

GALLANT TRANSPORT, INC. and JON ANDREW GALLANT, SR.,
Defendant/Intervenor-Appellee.

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant, Jon Andrew Gallant, Jr., appeals the judgment of divorce in this action filed by plaintiff, Teri Lynn Gallant.

I. Facts

Plaintiff and defendant married in 1981. Before they wed, defendant started a transport business and a lubrication management company that serviced machines at area auto plants. In 1978, defendant left college to work full time for his

businesses. The same year, defendant incorporated both businesses as Gallant Transport, Inc., after his father, Jon Gallant, Sr., joined him as a partner. After a few years, defendant and his father divided the business into Gallant Transport, Inc., the transport company, and Gallant Industrial Services, Inc., the lubrication management company. Thereafter, defendant and his father also formed J & J Real Estate, a real estate holding company for the two other businesses. It is undisputed that defendant and his father each own 50 percent of the companies and that, by voting agreement, Jon Gallant, Sr., controls 51 percent of the voting stock of Gallant Transport and Gallant Industrial Services.

During the marriage, plaintiff stayed home and raised the parties' six children. Plaintiff did not attend college and she testified that, during the marriage, though she painted a few murals for friends and family, she did not otherwise work outside the home. After she filed for divorce, plaintiff was 43 years old, defendant was 49 years old, and they had three minor children living at home.

Before trial, defendant agreed to pay $800 per month in child support. In its judgment, the trial court awarded plaintiff the marital home and its contents, and awarded defendant his businesses, including real estate and equipment. The trial court awarded plaintiff $700 per month in alimony for five years, insurance coverage, and approximately 65 percent of defendant's 401(k), plus a portion of her

household expenses during the litigation. Defendant contends that the property division and the amount of spousal support awarded to plaintiff is inequitable.

II. Analysis

"In a divorce case, this Court must first review the trial court's findings of fact regarding the valuations of particular marital assets under the clearly erroneous standard." *Draggoo v Draggoo,* 223 Mich App 415, 429; 566 NW2d 642 (1997). "If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts." *Id.* at 629-630, citing *Sparks v Sparks,* 440 Mich 141, 151-152; 485 NW2d 893 (1992). A trial court's "ruling should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Sparks, supra* at 152. When applicable, courts should consider the following factors when making a property division: "(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Id.* at 159-160.

With regard to spousal support, as this Court explained in *Olson v Olson,* 256 Mich App 619, 631; 671 NW2d 64 (2003):

The award of alimony is in the trial court's discretion. *Pelton v Pelton,* 167 Mich App 22, 27; 421 NW2d 560 (1988). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. [*Moore v Moore,* 242 Mich App 652, 654; 619 NW2d 723 (2000).] Among the factors that should be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. *Ianitelli v Ianitelli,* 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames v Thames,* 191 Mich App 299, 308; 477 NW2d 496 (1991).

Here, the trial court's findings of fact on the value of the marital assets were not clearly erroneous.

On the basis of expert testimony, the trial court found that the marital home was worth $192,000, and the net equity in the home was

$145,869. The parties presented differing evidence about defendant's income at the time of trial and defendant argues that his spousal support obligation is too high in light of his current salary. Plaintiff's expert, Edward Dupke, testified that the value of Gallant Industrial Services had diminished in the two years prior to trial, ostensibly because of changes in how the auto companies hire outside services. Dupke testified that sales for the year ending December 31, 1999 were about $1.6 million, $1.8 million for year ending 2000, and for the year ending in 2001, the sales were $1.4 million. Dupke further testified that, in 2002, sales declined to $445,000 and, for 2003, sales were $379,000. Dupke observed that Gallant Transport had revenues of $2.8 million in 1999, $3 million in 2000, $2.6 million in 2001, $2.2 million in 2002, and $2.4 million in 2003. Dupke testified that, when Gallant Industrial Services was doing well in 2000 and 2001, defendant received officer's compensation of $350,000 and $340,000 per year. But, Dupke noted that, in 2003, defendant earned $32,000. Dupke also stated that defendant and his father did payroll out of one company and then did a charge-back to the other company to balance the payroll charge. This was not improper, according to Dupke, but he observed that it was within defendant's control to determine the amount of his salary.

According to defendant, he and his father capped director compensation at Gallant Industrial Services, which resulted in his reduced income. He

testified that he grosses a thousand dollars every other week. Defendant maintained that he received a total of $26,000 a year in salary and $8,000 a year in rental income from J & J Real Estate. According to defendant, business for Gallant Transport had diminished to the point that his brother, who helps run the company, had to get a part-time job to supplement his income. Defendant's expert, William King, submitted that defendant's average salary for the five years prior to trial was $314,185, though his salary fell significantly in the two years before trial.

In its findings of fact, the trial court concluded that testimony established that defendant earned $32,623 in 2002 and $26,326 in 2003. However, the trial court also observed that "the Court is not unmindful that the Defendant has authority to increase his income and, based on past earnings, it is persuasive that 2002 and 2003 do not properly consider an unexercised ability to earn income at a level consistent with compensation he received in earlier years." The trial court's conclusions were correct. Uncontroverted testimony established that defendant's income dropped precipitously in 2002 and 2003 and that he declared very little in income during those years. However, evidence established that defendant decided his own salary and that he could increase his income if he so desired, particularly in light of Gallant Transport's continued financial viability.

The trial court also valued defendant's businesses on the basis of expert testimony at trial. To value Gallant Industrial Services, the trial court "balanced" the testimony of the two expert valuations and concluded that, as to defendant, the business is worth $10,000. With regard to J & J Real Estate, plaintiff's expert valued the company at $404,000, and defendant's expert valued it at $230,000. Including the land and depreciation for a 35-year-old building, the trial court valued J & J Real Estate at $140,204, with defendant's half totaling $70,000. It was undisputed that defendant's 401(k) through his businesses had a balance of $488,787.62 when it was valued on July 12, 2004.

A. Value of Gallant Transport and Life Insurance Policies

Defendant asserts that the trial court initially erred when it valued Gallant Transport at $214,835, because defendant's actual interest in the business was only 50 percent of that, or $107,417.50. However, as plaintiff notes, the trial court corrected the error and, in its first judgment on January 6, 2005, the trial court took $107,417.50 from plaintiff's 401(k) award to correct its mistake. Defendant refused to sign the judgment and took issue with several of the trial court's findings and conclusions, including the trial court's ruling that plaintiff was entitled to an interest in the corporate insurance policies that insured the life of both defendant and his father.

The trial court initially ordered defendant to maintain four life insurance policies through his businesses, two that insured defendant's life and two that insured the life of his father, Jon Gallant, Sr., with death benefits totaling $2 million. The court first explained that the purpose of the order was to ensure that defendant's spousal and child support obligations would continue if he died. The court later added that it intended part of the death benefit to go to plaintiff in lieu of a longer period or larger amount of spousal support. Defendant disputed this portion of the judgment, among others, and Gallant Transport and Jon Gallant, Sr. intervened in the case to challenge the order. The trial court ultimately agreed with defendant and the intervenors and ruled that it had no jurisdiction to order them to maintain the policies or to award the death benefits to plaintiff.

However, the trial court made clear that the reason it granted plaintiff an interest in the insurance benefits was to offset its relatively small award of spousal support to plaintiff. The trial court awarded plaintiff $700 per month for five years, in order to allow her to go back to school or to otherwise acquire job skills. Under the circumstances, the trial court's observation was correct. Because plaintiff married defendant shortly after high school and stayed home for more than 23 years to care for their children, and that defendant earned, or could earn, a significant income from his businesses, it was not inequitable for the trial court to conclude that

plaintiff was entitled to either more spousal support or a larger part of the marital estate than it initially awarded. Moreover, when they were married, plaintiff and defendant lived on an income many times higher than the amount of spousal support the trial court awarded. It was clearly not inequitable to award plaintiff a fraction of that income to allow her to maintain the home and the life to which she and the children had been accustomed.

B. Health Insurance and 401(k)

Defendant also takes issue with the trial court's decision to award plaintiff the additional $107,000 from defendant's 401(k), the interest earned on the 401(k) during the proceedings, and health, dental and optical insurance coverage. Specifically, he asserts that the awards were improper because the trial court did not find him at fault for the breakdown of the marriage and because they are inequitable in light of the circumstances of the case.

In *Sparks, supra* at 158, our Supreme Court stated "that the conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance." This Court reiterated in *Welling v Welling*, 233 Mich App 708, 710; 592 NW2d 822 (1999), that "each factor need not be given equal weight where the circumstances

dictate otherwise." In *Sparks,supra* at 163, our Supreme Court also said that "[m]arital misconduct is only one factor among many and should not be dispositive."

Thus, notwithstanding that the trial court did not find either party to be at fault for the breakup of the marriage, other factors established that plaintiff should receive a greater share of the marital estate. As we noted above, not only did defendant have a far greater income potential from his businesses, plaintiff had no higher education, little to no work experience, and she raised the children for 23 years while defendant built his businesses. Further, without some monetary assets, plaintiff could not afford to maintain the home in which three minor children lived. Given the tremendous disparity in the parties' earning abilities and work experience, the trial court's award of the additional money from the 401(k) to plaintiff was fair and equitable. For the same reasons, the trial court's decision to grant plaintiff the interest earned on the 401(k) between July 12, 2004 when it was valued until the date of segregation by the plan provider, approximately $60,000, was not unfair or inequitable. Under these circumstances, we are not "left with the firm conviction that the division was inequitable." *Sparks, supra* at 152.

Further, we are not persuaded that it was inequitable for the trial court to order defendant to pay for plaintiff's health, dental, prescription and

optical insurance. Though defendant asserts that plaintiff was never provided such comprehensive insurance during the marriage, we found no evidence at trial to establish whether plaintiff had such insurance coverage before the divorce. Regardless, the trial court's ruling stated that the benefits would continue, "until such time as she obtains employment or has comparable insurance she can obtain at a reasonable price through her employment or through the government when she becomes eligible." As a practical matter, it appears likely that plaintiff will have to secure employment to support herself, because her spousal support of $700 per month will cease five years after the divorce judgment and any monetary award will not last forever. Thus, defendant's obligation will cease once plaintiff begins a job or has other, reasonably affordable coverage. Under the circumstances, the trial court's ruling was both fair and equitable.

C. Decreasing Insurance Policies

Defendant also complains that the trial court should not have required him to maintain decreasing term life insurance and disability insurance policies in order to ensure that he could continue his child support and spousal support obligations. Defendant has waived this issue. As plaintiff points out, defendant affirmatively *suggested* to the trial court that he maintain a decreasing term insurance policy to cover 110 percent of his support obligations, in lieu of plaintiff receiving a portion of the death benefits in

the corporate life insurance policies. It is well-settled that "[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Blazer Foods, Inc v Restaurant Properties, Inc,* 259 Mich App 241, 252; 673 NW2d 805 (2003). Further, "error requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence." *Lewis v LeGrow,* 258 Mich App 175, 210; 670 NW2d 675 (2003). Again, defendant recommended that he be
ordered to obtain the diminishing policies to cover his obligations and he will not be heard to argue otherwise on appeal.

D. Household Expenses

Defendant contends that the trial court unfairly ordered him to pay some of plaintiff's household expenses during the litigation. Again, plaintiff was earning little to no income during the trial, defendant's support obligations did not begin until months after plaintiff filed for divorce, and three minor children lived at home during the litigation. The trial court ultimately awarded plaintiff $4,831.30 in living expenses. Defendant asserts that this was improper because the trial occurred in September 2004 and defendant was obligated to pay these expenses through August 5, 2005, just before the final amended judgment was

entered. As plaintiff notes, the original judgment of divorce contemplated that plaintiff would begin to make mortgage, insurance, and tax payments after the judgment of divorce was entered. For months, however, the parties could not finalize defendant's spousal support obligation or the division of the marital estate, so the trial court agreed that defendant should contribute to the maintenance of the household. Defendant provides no basis for us to conclude that this decision was inequitable.

E. Stipulation

Finally, defendant complains that he should not be bound by his stipulation to pay half of his children's parochial school expenses. According to defendant, plaintiff was not similarly bound by her stipulation regarding mortgage expenses. Defendant fails to explain how the stipulations are related or how they both affected the parties. Though no writing in the record clarifies the parameters of plaintiff's stipulation, it appears that plaintiff's stipulation involved her agreement that defendant could make direct mortgage payments as part of his monthly alimony obligation. However, on the basis of this limited explanation, we agree with plaintiff that, regardless whether defendant paid the mortgage company or plaintiff, the amount of defendant's alimony obligation would remain the same. Because it would have no apparent impact on defendant, defendant failed to establish how this stipulation compares to defendant's agreement to pay for half of

his children's education expenses. Accordingly, and because the trial court's decision was clearly fair and equitable, defendant's argument is without merit.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray

Mich. Court of Appeals' Order 8/21/2007 **Appendix D**
Court of Appeals, State of Michigan

ORDER

	Helene N. White
Teri Lynn Gallant v	Presiding Judge
Jon Andrew Gallant, Jr.	Henry William Saad
Docket No. 265396	Christopher M. Murray
LC No. 03-002034-DM	Judges

The Court orders that the motion for reconsideration is DENIED, and the motion for appellate attorney fees is DENIED.

/s/ Helene N. White
Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Aug. 21, 2007 /s/ Sandra Schultz Mengel
Date Chief Clerk

Amended Judgment of Divorce Appendix E

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
FAMILY DIVISION

TERI LYNN GALLANT,
Plaintiff
-v-

JON ANDREW GALLANT, JR.,
Defendant
and
GALLANT TRANSPORT, INC., a Michigan corporation,
and
JON ANDREW (SAM) GALLANT, SR.
Intervener Defendants.

File No: 03-2034-DM
Hon. John G. McBain

AMENDED JUDGMENT OF DIVORCE

TRUE COPY OF ORIGINAL FILE
SEP 0 8 2005
Jackson Co. Cir Ct
Sandra Crowley,
Co. Clerk

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Amended Judgment of Divorce Appendix E
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At a session of said Court held in the Circuit Courtrooms, in the City of Jackson, County of Jackson, State of Michigan, on this 7th day of September, 2005.

PRESENT: HONORABLE JOHN G. MCBAIN
Circuit / Family Court Judge

A trial having been held in this matter in September, 2004, and a Judgment of Divorce having been entered on January 6, 2005, and the Defendant having filed his Motion for Reconsideration, and the Intervening Defendants, Gallant Transport, Inc., and Jon Andrew (Sam) Gallant, having filed their Motion to Intervene and to Modify, and the Plaintiff having filed her Motion for Payment of Marital Expenses Incurred between 09/21/2004 and 01/06/2005, and following the Court's consideration of all of said matters, and arguments on same, the Court having handed down its Final Order and Conclusions of Law After Divorce Trial and Motion for Reconsideration and to Pay Marital Expenses Incurred Between 09/21/04 to Date of Entry of Judgment of Divorce, issued on June 27, 2005, and it satisfactorily

appearing to this Court that the material facts alleged in the Complaint are true and that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage relationship can be preserved, and the Court being otherwise fully advised in the premises, therefore;

IT IS HEREBY ORDERED AND ADJUDGED by this Court by virtue of the authority therein vested, and in pursuance of the statute in such case made and provided, that the marriage between the Plaintiff, Ten L. Gallant, and the Defendant, Jon A. Gallant, Jr., be, and the same is hereby dissolved, and a divorce from the bonds of matrimony between said parties is also **ORDERED AND ADJUDGED.**

CUSTODY OF MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant and the Defendant, Jon A. Gallant, Jr. shall have joint legal and shared physical custody of the parties' minor children herein, namely:

Darcie Gallant	DOB: March 10, 1988	AGE: 17 Years	SS#: xxx-xx-7773
Jon Gallant	DOB: December 9, 1990 AGE: 14 Years		SS#: xxx-xx-0472
Madison Gallant	DOB: July 3, 1996	AGE: 9 Years	SS#: moc-xx-6145

until said children reach the age of eighteen (18)

years or graduate from high school, whichever later occurs, but in no event after 19 and 1/2 years, or until further Order of this Court.

PARENTING TIME WITH MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded parenting time with the parties' minor children as follows:

Alternate weekends from Friday after school until Tuesday morning when the children go to school.

Monday from after school until Wednesday morning when the children go to school on alternate weeks.

The parties shall equally share Christmas break (50/50).

The parties shall alternate Spring break with the Defendant, Jon A. Gallant, Jr., having the odd numbered years.

The parties shall equally share the summer vacation on a weekly basis, with each party having two uninterrupted weeks.

The Plaintiff, Teri L. Gallant, shall have the first three days after school is out for the summer, and she also shall have the last four days of summer vacation that precede the start of school.

The parties shall have holiday parenting time pursuant to mutual written agreement. Absent said agreement, the holiday parenting time shall be in accordance with the current Jackson County Friend of the Court Parenting Time Holiday Schedule.

INALIENABLE RIGHTS OF MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall consult with each other and keep each other informed as often as may be necessary concerning the major medical, dental, optical, orthodontic and/or mental health problems that the minor children may develop; the furtherance of any specific talents expressed by the minor children in any art form, including, but not limited to, music, dance or athletics; and any religious beliefs that shall be practiced and included in the rearing of the minor children.

IT IS FURTHER ORDERED AND ADJUDGED that each of the parties shall take all measures deemed advisable to foster a feeling of affection between the minor children and the other party, and neither party shall do anything which may estrange the minor children from the other party, or impair the high regard of the minor children for the other party.

IT IS FURTHER ORDERED AND ADJUDGED that neither party shall expose the minor children to any situation which may be detrimental to the health or mental well being of the minor children. Further, neither party shall use the minor children for purposes of delivering messages between the parties, or gathering information about the private activities of the parties.

DOMICILE OF MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the domicile of the parties' minor children shall not be removed from the State of Michigan without the prior written approval of the Judge who awarded custody, or his successor.

IT IS FURTHER ORDERED AND ADJUDGED that a parent whose custody or parenting time of a child or children is governed by this Judgment, shall not change the legal residence of the child or children, except in compliance with Section 11 of the Child Custody Act of 1970; 1970 PA 91.; MCL 722.31. Except as otherwise provided in Section 11 of the Child Custody Act, a parent whose custody is governed by a Court Order shall not change a legal residence of the child to a location that is more than one hundred (100) miles from the child's legal residence at the time of the commencement of the action in which the Order is issued.

CHILD SUPPORT AND CHILD CARE EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that, prior to commencement of trial, the parties reached agreement on legal and physical custody and a parenting time agreement. The parties also reached an agreement that the Defendant would pay $800.00 per month in child support for three minor children. This figure was reached by the

consent of the parties as part of their negotiations concerning custody and parenting time.

IT IS FURTHER ORDERED AND ADJUDGED that the amount of $800.00 per month in child support was not based on the parties' established earnings presented at trial and calculated pursuant to the Michigan Child Support Guidelines. This amount, however, does, exceed the guidelines, based on the parties' income information submitted at trial.

IT IS FURTHER ORDERED AND ADJUDGED that the issue of child care is reserved.

SPOUSAL SUPPORT

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., shall pay the Plaintiff, Teri L. Gallant, rehabilitative spousal support in the amount of Seven Hundred and 00/100 ($700.00) Dollars per month for the next five (5) years, **commencing January 6, 2005.**

IT IS FURTHER ORDERED AND ADJUDGED that said spousal support shall be includable in income to the Plaintiff, Teri L. Gallant, and is deductible from income of the Defendant, Jon A. Gallant, Jr., as defined by IRC Sec. 71. In no event shall the Defendant be required to pay spousal support to the Plaintiff for any period of time after the Plaintiff dies, or be required to make any payments in cash or property as a substitute for

spousal support, after the Plaintiff dies.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is not entitled to spousal support and none is reserved.

IMMEDIATE INCOME WITHHOLDING

IT IS FURTHER ORDERED AND ADJUDGED that unless otherwise ordered, child support and spousal support shall be paid by income withholding order through the Friend of the Court or Michigan State Disbursement Unit. The Michigan State Disbursement Unit and the Friend of the Court are hereby directed to transmit all sums of money so paid to the Plaintiff, Teri L. Gallant, at her address or at such other addresses as she may be residing from time to time. Payment made for child support shall commence on January 1, 2005. Unless otherwise ordered, this order continues as to child support until each minor child is age eighteen (18) years, and up to the age of nineteen and one-half (19 1/2) years for the time that; (i) the child is a full-time student; (ii) the child is regularly attending high school; (iii) there is a reasonable expectation of completing sufficient credits to graduate; and (iv) the child is residing with the payee of support/custodial parent, or an institution while attending high school, or until further Order of this Court.

AUTHORITY OF INCOME WITHHOLDING

IT IS FURTHER ORDERED AND ADJUDGED that an Income Withholding Order shall be entered pursuant to MCLA 552.501, et seq., MSA 25.176(1), et seq., and MCLA 552.601, et seq.; MSA 25.165(1) et seq., if an arrearage in child support or spousal support exceeds an amount equal to four (4) weeks payments. If an income Withholding Order is entered under the provisions of MCLA 552.601, et seq.; MSA 25.164(1), et seq., and the fixed amount of arrearage is reached, the office of the Friend of the Court shall send notice of the arrearage to the payer by ordinary mail addressed to payer's last known address. The Income Withholding Order shall take effect fourteen (14) days after the date of the notice unless the payer responds by requesting a hearing or by paying the arrearage in full.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall keep the Friend of the Court informed of their current employer, employer's address, and any health insurance coverage available as a benefit of employment.

SERVICE FEES

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., shall pay to the Friend of the Court or the Michigan State Disbursement Unit the statutory fee of Three and 50/100 ($3.50) Dollars per month, payable semi-annually on January 2nd and July 2nd. The statutory fee shall be computed from the beginning date of this child support order, and shall continue

while this Judgment of Divorce is operative. The service charge shall be paid six (6) months in advance on each of the due dates except for the first payment which shall be paid at the same time as this Judgment of Divorce is filed and shall cover the period of time from the date hereof to the next calendar due date. The Friend of the Court or Michigan State Disbursement Unit may deduct the service charge from any monies paid after the due date of the service charge. The Friend of the Court or Michigan State Disbursement Unit is hereby authorized and directed to transmit to the County Treasurer of this County the sums so paid under this provision of this Amended Judgment of Divorce.

PUBLIC ASSISTANCE

IT IS FURTHER ORDERED AND ADJUDGED that if the Plaintiff, Teri L. Gallant, receives public assistance, then the Jackson County Friend of the Court is directed to transmit the child support payments to the Family Independence Agency or an appropriate agency in another state.

IT IS FURTHER ORDERED AND ADJUDGED that if either party receives unemployment compensation, he or she shall inform the Jackson County Friend of the Court as to the Michigan Employment Security Commission office or comparable office in another state from which such compensation is paid.

ARREARAGE

IT IS FURTHER ORDERED AND ADJUDGED that any child support arrearage owing to the Plaintiff or the State of Michigan is hereby preserved, whether the arrearage arose under a Temporary Child Support Order or under a separate Judgment.

IT IS FURTHER ORDERED AND ADJUDGED that if an arrearage exists when child support is otherwise scheduled to cease under the Judgment of Divorce, support payments shall continue at the regular support rate then in effect until said arrearage is paid in full.

IT IS FURTHER ORDERED AND ADJUDGED that the parties are hereby notified that the payer herein may be subject to the imposition of liens by operation of law, and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an amount greater than the amount of periodic support payments for one (1) year under the payer's support order.

CONTINUING DUTY TO NOTIFY FRIEND OF THE COURT

IT IS FURTHER ORDERED AND ADJUDGED that both the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, Jr., shall promptly notify and update the Friend of the Court, in writing, within twenty-one (21) days, whenever the parties move to another address; whenever the

minor children are moved to another address; whether the parties hold an occupational license and driver's license; the name and address of the parties' current employer and other sources of income; and any health insurance coverage available as a benefit of employment or changes in same. As used herein, "source of income" means that term as defined in Section 2 of the Support and Visitation Enforcement Act, Act No. 295 of the Public Acts of 1982, being Section 552.602 of the Michigan Compiled Laws.

NOTICE TO FRIEND OF THE COURT

The present address of the Plaintiff, Teri L. Gallant, is 2800 Leland, Jackson, Michigan, 49203; her date of birth is July 25, 1961; and her Social Security Number is
XXX-XX-4393. Plaintiff does not hold an occupational license. Plaintiffs driver license number is G 453 789 564 584. Plaintiff is currently not employed.

The present address of the Defendant, Jon A. Gallant, Jr., is 1741 Lochmoor Boulevard, Jackson, Michigan, 49201; his date of birth is 04-13-1955; and his Social Security Number is XXX-XX-2013 . Defendant does not hold an occupational license. Defendant's driver license is G 453 435 067 288. The name and address of Defendant's employer is Gallant Industrial Services, Inc., 3519 Wayland, Jackson, MI 49202 (517) 784-2857.

NOTICE TO FRIEND OF THE COURT REGARDING ARREARAGE

The Defendant's child support obligation shall commence January 1, 2005.

SUPPORT AND VISITATION ENFORCEMENT ACT

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided in Section 3 of the Support and Visitation Enforcement Act, No. 296 of the Public Acts of 1982, being Section 552.603 of the Michigan Compiled Laws, a Support Order that is part of a Judgment of Divorce is an Order in a domestic relations matter as that term is defined in Section 31 of the Friend of the Court Act, Act No 294 of the Public Acts of 1982, being Section 552.531 of the Michigan Compiled Laws, is a Judgment on and after the date each support payment is due, with the full force, effect, and attributes of a Judgment of this State, and is not, on and after the date it is due, subject to retroactive modification. A fee will be added to support payments that are past due as provided in Section 3(a) of the Support and Visitation Enforcement Act, being Section 552.603(1) of the Michigan Compiled Laws.

IT IS FURTHER ORDERED AND ADJUDGED that on January 1st and July 1st of each year, additional support calculated at an eight (8%) percent annual rate shall be added to support payments that are past due as of those dates.

Amended Judgment of Divorce Appendix E

MEDICAL AND HOSPITALIZATION INSURANCE FOR THE MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that both parties shall maintain hospital, medical, optical and dental insurance for the minor children as is available through their places of employment at minimal or reasonable cost. Any ordinary and extraordinary medical, dental, optical and / or health care expenses for the parties' minor children which are not reimbursed by any policy of insurance shall be divided and paid by the Plaintiff, Teri L. Gallant, contributing Twenty-Four (24%) percent and the Defendant, Jon A. Gallant , Jr., contributing Seventy-Six (76%) percent, The Health Care Provider is PHP, Member #52156-XXX-XX-2013; Name of Insured, Jon A. Gallant, Jr.; The Dental care provider is: Companion Life, ID# D368622013, GRP: 903-14-77946-000. Health care means products or services provided or prescribed by a person or organization licensed or legally authorized to provide or prescribe human health care products or services. If any o the uninsured health care expenses are paid by the custodial party which are the responsibility of the non-custodial party, such payment shall be reimbursed to the custodial party b the non-custodial party upon presentment to the non-custodial party of proof of treatment, including diagnosis, an itemized billing and proof of payment; that after such presentment, any such bill remaining unreimbursed for more than thirty (30) days may be brought attention of the Friend of the Court for

enforcement as though it was support. In the event this course of action is necessary, the at fault party shall be responsible for any and all costs and fees, including actual and reasonable attorney fees, associated with he enforcement of this provision.

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to MCLA 552.15(4), MSA 25.95[4], each party shall keep the office of the Friend of the Court informed of any health coverage available to him or her as a benefit of employment or that is maintained by him or her; the name of the health care insurance company, nonprofit health care corporation, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the persons for whose benefit he or she maintains health care coverage.

IT IS FURTHER ORDERED AND ADJUDGED that the hospitalization, medical, dental and optical insurance and division of health care expenses for the parties' minor children enumerated above shall continue until the minor children have reached the age of eighteen (18) years and up to the age of nineteen and one-half (19 1/2) years for the time that: (i) the child is a full-time high school student; (ii) the child is regularly attending high school; (iii) there is a reasonable expectation of completing sufficient credits to graduate; and (iv) the child is residing with the payee of support/custodial parent, or an institution while attending high school, or until further Order of this Court.

HEALTH AND HOSPITALIZATION COVERAGE FOR PLAINTIFF

IT IS FURTHER ORDERED AND ADJUDGED that, effective the date of entry of this Amended Judgment of Divorce, and provided that said expense is not excluded for consideration under the Payment of Marital Expenses provisions of this Amended Judgment of Divorce, and in consideration of all of the factors of the law concerning alimony as said factors relate to this case, the Defendant-Father shall be responsible for maintaining and paying for the cost of the Plaintiff-Mother's medical, prescription, optical and dental insurance for the rest of her life, or until such time as she obtains employment which provides comparable insurance which she can obtain at a reasonable price, through her employment, or until such time as she is eligible for same through the government. The Defendant-Husband shall timely provide health coverage cards to the Plaintiff at all times coverage is in effect.

IT IS FURTHER ORDERED AND ADJUDGED that the Court reserves the right to revisit the issue of Plaintiff's COBRA / health care coverage if it is interrupted.

IT IS FURTHER ORDERED AND ADJUDGED that the Court recognizes that benefits may be available to the Plaintiff under COBRA for three (3) years, but, due to the length of this

marriage, the disparity in income / earnings of the parties, and the fact that this insurance coverage was covered and provided for the parties for many years, it is ordered to be included as part of the spousal support award to Plaintiff in this matter.

IT IS FURTHER ORDERED AND ADJUDGED that the cost of the aforementioned health, medical, prescription, optical and dental insurance premiums which the Defendant is ordered to maintain for the Plaintiff as set forth herein, shall be included in the amount of coverage which the Defendant shall provide by his individual life and disability insurance policies, so that the cost of all of these health care premiums is secured.

LIFE / DISABILITY INSURANCE TO BE MAINTAINED BY THE DEFENDANT

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant-Father shall secure individual life insurance and disability policy(ies), on a declining balance, to secure his obligation to pay alimony in the amount of $700.00 per month for five (5) years beginning January 6, 2005, child support in the amount of $800.00 per month, and the cost of all of the health care coverages which the Defendant is required to provide and maintain for the Plaintiff as set forth herein.

IT IS FURTHER ORDERED AND ADJUDGED that, as the parties' youngest child will

be nine (9) years old this year, the Defendant's child support obligation will extend for approximately 10.5 more years. This future period of time represents a gross child support obligation of an unknown amount. Alimony for five years at $700.00 per month represents an obligation of approximately $36,000.00.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant-Father shall obtain declining balances individual life insurance and disability policy(ies) to secure his obligation to pay alimony, child support and the cost of all of the health care coverages which the Defendant is required to provide and maintain for the Plaintiff, provided said insurances can be obtained at a reasonable cost, with the Defendant to supply Plaintiff with documentation relative to said cost.within 15 days of the date of the entry of this Amended Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant shall designate the Plaintiff and the minor children as the primary and irrevocable beneficiaries on said declining balance policy(ies), with the Defendant-Father shall provide documentation once per year that said policy(ies) has / have been paid and that beneficiaries have not been changed.

BANKRUPTCY PROVISION

IT IS FURTHER ORDERED AND ADJUDGED that to the extent that either party is

required by the terms of this Judgment to assume responsibility for paying certain debts, including obligations owed to each other pursuant to this Judgment of Divorce, and / or indemnifying the other harmless from any liability, such obligations shall be deemed to be a support obligation under 11 USC Section 523(a)(5), and *shall not be dischargeable in bankruptcy as to the other party.*

IT IS FURTHER ORDERED AND ADJUDGED that, if either party fails to pay or repay any of their debts or obligations, including those owed to the other party pursuant to this Judgment of Divorce, and / or if a party files bankruptcy in an attempt to discharge a debt, then the other party shall be entitled to an immediate award of alimony in the amount for which that party would then be responsible to pay as a means of indemnification for said debt.

IT IS FURTHER ORDERED AND ADJUDGED that the parties acknowledge and agree that in the event that either party was to file bankruptcy, or in the event an involuntarily petition of bankruptcy is filed against either, that the benefit to the bankrupt party in discharging his or her indemnity obligation to the other party would be outweighed by the detrimental consequences of such discharge to the other party. The parties acknowledge and agree that their indemnity obligations are non-dischargeable in bankruptcy as provided under Section 523(a)(15) of the Bankruptcy

Code.

TAX EXEMPTIONS / DEDUCTIONS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded the right to claim the parties' minor children, Darcie Gallant, d/o/b March 10, 1988, Jon Gallant, d/o/b December 9, 1990, and Madison Gallant, d/o/b July 3, 1996, as income tax exemptions for federal, state, and local tax purposes for the year 2004 and all years following until said children can no longer be legally claimed.

The Defendant / Plaintiff shall timely execute and provide to Plaintiff / Defendant income tax Form 8332, "Release of Claim to Exemption for Child of Divorce or Separated Parents", relating to the parties' minor children, upon the request of the Plaintiff.

IT IS FURTHER ORDERED AND ADJUDGED that if, for any tax year including tax year 2004 and thereafter, the Plaintiff is to receive no value or benefit by claiming said tax deductions for the children, then those tax deductions for the minor children for which the Plaintiff would receive no value or benefit, shall be awarded to the Defendant for that tax year.

IT IS FURTHER ORDERED AND ADJUDGED that should this provision result in the filing of amended tax returns for 2004, the Defendant

shall pay to his Certified Public Accountant any cost associated with doing so.

CHILD INCOME TAX CREDIT

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to the IRC Sec. 24, the Plaintiff, Teri L. Gallant, is awarded the right to claim the Child Income Tax Credit for the parties' minor children, Darcie Gallant, d/o/b March 10, 1988, Jon Gallant, d/o/b December 9, 1990, and Madison Gallant, d/o/b July 3, 1996, for the year 2004 and all years following until said credit cannot be taken, or said parent does not qualify.

IT IS FURTHER ORDERED AND ADJUDGED that if, for any tax year including tax year 2004 and thereafter, the Plaintiff is to receive no value or benefit by claiming said child income tax credit for the children, then those tax credits for the minor children for which the Plaintiff would receive no value or benefit, shall be awarded to the Defendant for that tax year.

PROPERTY SETTLEMENT AND PROVISION IN LIEU OF DOWER

IT IS FURTHER ORDERED AND ADJUDGED that the marital home commonly known as 2800 Leland, Jackson, Michigan, and more particularly described as land situated in the Township of Summit, County of Jackson and State of

Michigan, to-wit:

LOTS 45 AND 46 LEE WILLA-LOR ACRES EXTENSION NO.3, AS RECORDED IN LIBER 1090, PAGE 968, JACKSON COUNTY RECORDS

is awarded solely to the Plaintiff, Teri L. Gallant, along with any and all equity and liability of the marital home, *except as may be specifically provided herein.*

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, shall re-finance the marital home within sixty (60) days from the date of entry of this Amended Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, shall be responsible for all future home equity payments, future homeowners insurance, future property taxes, and other future expenses associated with this property which shall become due and owing for any period of time after January 6, 2005, and she shall indemnify and hold the opposite party harmless therefrom, and keep same current.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., shall sign a Quit Claim Deed granting any and all of his interest in the marital home to the Plaintiff, Teri L. Gallant, within sixty (60) days from the entry of

this Amended Judgment of Divorce, at the time of refinancing.

IT IS FURTHER ORDERED AND ADJUDGED that the provisions made herein for each party shall be in lieu of their dower or other spousal rights in the property of the opposite party and they shall hereafter hold the remaining lands and property, free, clear and discharged from any and all dower or other spousal rights or claims and said provisions shall be in full satisfaction of all claims each may have in any property of the opposite party or may hereafter own or which they have or may hereafter have an interest.

PAYMENT OF MARITAL EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiffs Motion for Payment of Marital Expenses Incurred Between 09/21/2004 and 01/06/2005 is *granted,* except that the Court's Order shall be extended through the date of August 5, 2005. Defendant-Father shall receive credit for any amounts he has paid during this period.

PAYMENT OF MINOR CHILDREN'S EDUCATIONAL EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that within 30 days of receipt by Plaintiff of her share of Defendant's 401(k) Plan Account, each party shall withdraw the sum of

$25,000 from their respective retirement accounts, and each party shall be responsible for payment of the respective tax on said distribution.

IT IS FURTHER ORDERED AND ADJUDGED that each party shall immediately deposit the $25,000 amount into a separate account, which shall require the approval and signature of both parties before a distribution / withdrawal can be made. Said checks shall be written directly to the respective school and / or to the provider of said educational expenses.

IT IS FURTHER ORDERED AND ADJUDGED that these accounts shall be used solely for the payment of all of the parties' minor children's Catholic educational expenses, fees and tuition, to attend St. Johns Elementary School, Jackson Catholic Middle School and Jackson Lumen Christi Catholic. High School. The Defendant shall pay the payment / contribution to the Catholic Church which secures the lower tuition rate for the minor children.

IT IS FURTHER ORDERED AND ADJUDGED that the assets held in these accounts shall be invested with a financial advisor selected by the individual parties. Said assets shall be invested in low risk vehicles / investments.

IT IS FURTHER ORDERED AND ADJUDGED that any balance remaining in said accounts after all of the children have completed

their education shall be the property of the respective account holder.

PERSONAL PROPERTY

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded all of the contents, furnishings, and appliances in the marital home.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, Jr., have divided the personal property pursuant to an agreement between themselves. The parties shall retain the personal property in their possession as of December 21, 2004, as their sole and separate property.

IT IS FURTHER ORDERED AND ADJUDGED that, except as otherwise specifically provided herein, each party shall retain as their sole and separate property, free and clear of any claim by the other party, the real and personal property then or hereafter titled in their respective names or held in their respective possessions, except as otherwise stated within this Amended Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that any lien, encumbranCe, or obligation on any property awarded to a party herein shall be the sole and separate liability of the party receiving the property, and said party shall indemnify and hold the opposite party harmless

therefrom, unless otherwise specifically provided for in this Amended Judgment of Divorce.

BANK ACCOUNTS

IT IS FURTHER ORDERED AND ADJUDGED that each party shall retain any funds they have in bank accounts, free and clear of any claim by the other party.

BUSINESS ASSETS

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded any and all marital interest in the family businesses, those being Gallant Transport, Inc., Gallant Industrial Services, Inc., and J & J Real Estate. The Plaintiff shall execute any and all documents necessary to implement this provision.

MARITAL DEBT

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and Defendant shall be responsible for any debt incurred in their own names since the filing of the Complaint for Divorce, and each party shall indemnify and hold the other harmless from any liability in connections therewith.

IT IS FURTHER ORDERED AND ADJUDGED that any other marital debt, in joint names, not specifically addressed in other provisions

of this Amended Judgment of Divorce shall be split equally by the parties, and each party shall indemnify and hold the other harmless from any liability on their part in connection therewith.

IT IS FURTHER ORDERED AND ADJUDGED that each party shall retain ownership of the vehicle in their possession, shall be responsible for the payment thereon, and shall refinance any debt thereon, and transfer title to their sole name, within 30 days of entry of this Amended Judgment of Divorce.

INSURANCE PROVISIONS

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., shall provide, to Plaintiff, Teri L. Gallant, documentation that all insurance / disability policy(ies) premiums set forth herein are timely paid at least once per year. Further, the Plaintiff, Teri L. Gallant, shall be provided by Defendant with copies of all notices of any proposed changes in said policies, in advance of the effective date of any changes, in writing, to her address of 2800 Leland Drive, Jackson, Michigan, 49203, or such further address as she may designate in writing. The receipt by the Plaintiff from the Defendant of the notice of declining balance coverage need not be provided in advance. Further, the Plaintiff, Teri L. Gallant, and the minor children, shall be designated as irrevocable beneficiaries on said life insurance and disability

policy(ies) in an amount equal to the cost of the remaining obligations of the Defendant for child support, spousal support and all health insurance premiums ordered to be maintained by the Defendant as set forth herein. Further, the Defendant, Jon A. Gallant, Jr., shall not only be responsible for full payment of the life insurance and disability premiums on this policy or policies, in the amount of the declining balances, but there shall also be no change of beneficiaries that would contravene this Amended Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that, as except as specifically provided herein, all rights of each party in and to the proceeds of any policy or contract of life insurance, disability insurance, endowment or annuity upon the life of the opposite party, in which he or she was named or designated as beneficiary, or to which they became entitled by assignment or change of beneficiary during the marriage, or in anticipation thereof, are hereby terminated and any such contracts or policies of insurance shall hereafter be payable to the estate of the respective party or to such other person or persons as they may hereafter designate as beneficiary thereof.

PENSION OR RETIREMENT BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded the amount of Three Hundred Eighteen

Thousand Eight Hundred Seventy-Six ($318,876.81) Dollars and 81/100 from the 401-K Profit Sharing Plan held by Jon Andrew Gallant, Jr., that being described as the Gallant 401(K) Profit Sharing Plan, Contract Number 4-44214, Plan Type: 401(K). Further, the Plaintiff, Teri L. Gallant, is awarded any and all increases in the value of the entire 401(K) Profit Sharing Plan with said increases to be defined as those accruing after July 12, 2004, and up to the date of segregation by the Plan Provider (Principal Group) pursuant to the provisions in the Plan. The Gallant corporation will act in an expeditious manner in order to secure the approval of said QDRO. *Except as otherwise specifically provided herein,* the Plaintiff shall be and is entitled to an expeditious lump sum distribution of the amount of $211,459.31 plus any and all increases in the value of the entire 401(k) Profit Sharing Plan as determined above, which distribution is permitted under IRC 414(p). The Plaintiffs mailing address for purposes of QDRO distribution from the Gallant 401(k) Profit Sharing Plan is 2800 Leland, Jackson, MI 49203. Neither party shall take any action to delay the distribution of 401(k) monies to the Plaintiff.

IT IS FURTHER ORDERED AND ADJUDGED that the remaining balance of $107,417.50 of the $318,876.81 amount plus earnings on the $107,417.50 amount, awarded to the Plaintiff from the Gallant 401(k) Profit Sharing Plan shall remain in the Gallant 401(k) Profit Sharing Plan, under Participant's name, on which amount (the

$107,417.50) and its earnings the Defendant shall not borrow against, levy, lien, lessen, decrease or diminish in value, in any way, and which amount, together with the earnings on said amount (gains / losses) which accrue after the date of segregation of this QDRO by the Plan Administrator of the Gallant 401(k) Plan, shall remain in said 401(k) Plan until such time as a final determination in this matter is made, including a final determination by any appellate court.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded the Smith-Barney IRA account in the amount of approximately $11,000.00.

IT IS FURTHER ORDERED AND ADJUDGED that, *except as otherwise specifically provided herein,* any interest that either of the parties hereto may now have or may heretofore have had in any insurance, endowment, pension, annuity, retirement benefits, deferred compensation, individual retirement accounts (IRA), contracts or policies of the other party, any accumulated contributions in any pension, annuity, or retirement system, and any right or contingent right in and to unvested pension, annuity or retirement benefits shall be and the same are hereby extinguished, and each party shall, in the future, hold all such interests free and clear from any right or interest which the other party now has or may heretofore have had therein or thereto by virtue of being the beneficiary,

the contingent beneficiary or otherwise.

IT IS FURTHER ORDERED AND ADJUDGED that should any QDRO entered by the Court be deemed not acceptable by the Plan, for reasons which have a valid basis, pursuant to ERISA or for any other valid and justifiable reason, the parties shall work together, with the Plan, to ensure that the appropriate QDRO reflecting the terms and provisions of this Amended Judgment, is entered, *nunc pro tunc.*

IT IS FURTHER ORDERED AND ADJUDGED that any necessary Qualified Domestic Relations Order(s) (QDRO) or Eligible Domestic Relations Order(s) (EDRO), whichever is appropriate, to be prepared to effectuate the transfer of the funds to the other party from the pension and savings plans as awarded in this Judgment, shall not be the responsibility of the attorney for either party to prepare or enter, unless separately retained.

RECORDATION OF JUDGMENT OF DIVORCE

IT IS FURTHER ORDERED AND ADJUDGED that each party shall execute, acknowledge and deliver to the opposite party as and when required, any and all deeds, assignments, insurance applications and or other instruments of release, assurance, transfer or conveyance required in order to effectuate the terms and provision of this Judgment of Divorce. In the event either party shall

fail, refuse, or neglect to execute, acknowledge and deliver any instrument required in order to implement the terms of this Judgment of Divorce, said Judgment of Divorce shall be self-executing and shall stand in the place and in the stead of any such instruments required and a certified copy of this Judgment of Divorce may be recorded in any office of the Register of Deeds, Secretary of State, or other public office and shall have the same force and effect as if such instrument had been executed.

INHERITANCE OR OTHER PROCEEDS

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided herein, neither party is obligated to pay to the other party any monies or proceeds which have been or will be received from any inheritance gifts, trust, lottery winnings, lawsuits, settlement or property, personal injury claims or eminent domain awards; and all rights, claims and demands of the Plaintiff against the Defendant and the Defendant against the Plaintiff in and to such monies and proceeds are waived, released, and forever barred.

COMPLETE ADJUDICATION OF PROPERTY RIGHTS

IT IS FURTHER ORDERED AND ADJUDGED that the above provisions with regard to property settlement are in complete adjudication of the property rights of the parties whether or not the

property interests are specifically outlined herein; further, that the division of real and personal property, as set forth herein, is deemed to be fair and equitable.

MUTUAL RELEASE

IT IS FURTHER ORDERED AND ADJUDGED that the property division provisions of the Judgment of Divorce fully satisfy all claims that either party may have against the other, except for the obligations and reservations contained in it.

IT IS FURTHER ORDERED AND ADJUDGED that each party, *except as otherwise specifically provided in this Amended Judgment of Divorce,* releases the other from all claims, liabilities, debts, obligations, actions and causes of action of every kind that have been incurred to the date hereof, whether known or unknown. However, neither party is relieved or discharged from any obligation arising under this Amended Judgment of Divorce or under any instrument or document executed pursuant to this Amended Judgment of Divorce or on or after the date hereof.

COMPLETE SETTLEMENT

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided herein, the Plaintiff and Defendant shall and do hereby mutually release, acquit and forever

discharge each other from all actions, debts, claims, demands and obligations whatsoever both in law and in equity which either of them ever had, now has, or may hereafter have against the other party, upon or by reason of any damages, claim, act or cause which occurred prior to the filing of this Amended Judgment of Divorce including, but not limited to, any injuries or damages which resulted from any accident, assault, assault and battery, or infliction of disease or illness.

RESTORATION OF MAIDEN NAME

IT IS FURTHER ORDERED AND ADJUDGED that the. Plaintiff may have her maiden name of Kulpinski restored to her, if she so chooses.

TERMINATION OF ATTORNEY OBLIGATION

IT IS FURTHER ORDERED AND ADJUDGED that the obligations of counsel to their respective clients in this matter shall terminate upon entry of this Amended Judgment.

DECREE BECOMES FINAL

IT IS FURTHER ORDERED AND ADJUDGED that this Amended Judgment shall become final upon the date of filing with the office of the Jackson County Clerk.

CONTINUING JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain ongoing jurisdiction under the terms and provisions of this Amended Judgment of Divorce. Any modification or alteration sought shall be conducted before this Court and the above named Judge or his successor.

ENFORCEMENT OF ATTORNEY FEES IN JUDGMENT

IT IS FURTHER ORDERED AND ADJUDGED that should either party take steps to enforce this Amended Judgment of Divorce in the event of a default by the other party, the non-prevailing party shall pay the costs and actual attorney fees incurred by the prevailing party in enforcing this Amended Judgment of Divorce.

ATTORNEY FEES

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and Defendant are both responsible for their own attorney fees incurred in this matter.

DISCLOSURE

IT IS FURTHER ORDERED AND ADJUDGED that in signing this Amended Judgment of Divorce, the Plaintiff, Teri L. Gallant acknowledges that she has read and understands its provisions.

IT IS FURTHER ORDERED AND

ADJUDGED that to the best of the parties' knowledge, they have fully disclosed all assets in which they have any ownership interest, and this Amended Judgment of Divorce distributes all the assets and only those assets that the parties have disclosed to each other.

Dated: _____, 2005

Hon. John G. McBain
P47476
Honorable John G. McBain
Circuit / Family Court Judge

Approved for Entry:

Teri Gallant
Teri Lynn Gallant
Plaintiff

Dennis Hurst
Dennis Hurst (P32409)
Attorney for Plaintiff

Approved for Entry as to Form but not Content, and Without Waiver of any Rights to Appeal:

Patricia Ouellette
Patricia M. Ouellette
(P53725)

Attorney for Defendant

_____
Jon A. Gallant, Jr.

_____
Friend of the
Court Attorney

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
FAMILY DIVISION

TERI LYNN GALLANT,
Plaintiff,

-v-

JON ANDREW GALLANT, JR.,
Defendant

FILE NO: 03-2034-DM

Hon. John G. McBain

And

GALLANT TRANSPORT, INC.,
a Michigan corporation, and

JON ANDREW SAM) GALLANT, SR.,
Intervener Defendants.

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FINAL ORDER *AND* CONCLUSIONS OF LAW AFTER DIVORCE TRIAL AND MOTION FOR RECONSIDERATION AND TO PAY MARITAL EXPENSES INCURRED BETWEEN 09/21/04 TO DATE OF ENTRY OF JUDGMENT OF DIVORCE

PROCEDURAL HISTORY

On December 21, 2004, this Court issued its Findings of Fact and Conclusions of Law After a Divorce Trial in this matter. Plaintiff prepared a Judgment of Divorce. On January 6, 2005, Defendant objected to the entry of divorce and would not sign the judgment. On January 6, 2005, the Court considered the Defendant's Motion for reconsideration and other related issues raised by the Intervener Defendants.

The primary issue before the Court on reconsideration is whether the Court legally erred in awarding Plaintiff-mother one-half of any life insurance policy to which Defendant had an interest, in either the family partnership or closely held

corporations.

The Court makes the following findings:

J & J Real Estate is the only partnership that is part of the marital estate, and it does not own any life insurance policies. Moreover, Defendant does not own any life insurance. Gallant Industrial Services, Inc., and Gallant Transport, Inc., are corporations which own four life insurance policies which have a value of two million dollars. Two of these life insurance policies insure the life of the Defendant. The other two policies insure the life of the Defendant's father.

The Court further finds that Defendant does not control the payments on the aforementioned four life insurance policies. The facts at trial established that Defendant owns 50% of the stock of Gallant Transport, Inc., and Gallant Industrial Services, Inc.

A voting agreement that controls decision making of these corporations, which was implemented in 1978, prior to the marriage of the parties, established that the Defendant owns only 49% of the voting rights.

Since the Defendant only owns 49% of the voting rights for both of the corporations, he does not have the authority to ensure the continuation of the aforedescrlbed life insurance policies.

The Court legally erred in concluding that one-half of these policies created an interest in the Defendant individually, which were part of the marital estate. The life insurance policies are owned by Gallant Industrial Services, Inc., and Gallant Transport, Inc. They are not owned individually or severally in any capacity by the Defendant.

Pursuant to the arguments of the Defendant and the Intervener Defendants, the Court legally erred in not determining that these life insurance policies were "key-man Insurance", which .are kept in place to provide the corporate insurer with the liquidity and ability to purchase its stock back from a deceased shareholder.

This is a fundamental technique, used by many closely held corporations to prevent unwanted third parties from becoming shareholders in the business entity, or entities in this case.

Therefore, the four life insurance policies are third-party (corporation) assets over which the Court has no jurisdiction or authority to make part of the marital estate. Flynn v. Flynn, 367 Mich 625 (1962); Krueger v. Krueger, 88 Mich App 722 (1979); and Hoffman v. Hoffman, 125 Mich App 488 (1983).

The Court awarded the Plaintiff-mother an interest in these policies to preserve the Defendant's ability to pay both child support and alimony.

After considering further arguments about these corporate life insurance policies, the Court concludes the continued maintenance of these policies by court order could actually lessen Defendant-father's ability to pay alimony and child support.

One of the policies on the Defendant's 71-year old father has had premiums in the past paid from the cash surrender value of the policy. This pattern of paying premiums also has been used to pay the premiums on several policies on the Defendant.

Thus, the corporations have not been using revenue to pay for the policies. Once the cash surrender value has been used, a court order requiring the life insurance policies to be paid from corporate revenues will lessen profits and the ability of the Defendant to pay alimony and child support.

WHEREFORE, the Court will require the Defendant-father to secure an individual life insurance policy to secure his obligation to pay alimony in the amount of $700.00 per month for five years, and child support in the amount of $800.00 per month.

There are three minor children subject to the support order. The youngest of these children will be nine years old this year. As a result, the Defendant's child support obligation will extend for

approximately 11 more years. This leaves a gross child support obligation of $115,200.00. Alimony for five years at $700.00 per month equals an obligation of $42,000.00.

Defendant-father's child support and alimony obligation of approximately $157,000.00 shall be secured through a life and/or disability insurance policy, which he shall pay for, keep fully paid, and make the Plaintiff and his children the beneficiaries. Defendant-father shall provide documentation once per year that the policy has been paid and that beneficiaries have not been changed.

In considering the factors concerning alimony, the Defendant-father shall also be responsible for paying Plaintiff-mothers medical, prescription, optical and dental insurance for the rest of her life, or until such time as she obtains employment or has comparable insurance she can obtain at a reasonable price through her employment or through the government when she becomes eligible.

The Court recognizes that benefits may be available under COBRA for three years, but due to the length of the marriage, disparity in income earning of the parties, and the fact that this insurance coverage was covered for the parties for many years, it is included as part of the spousal support.

The price of these premiums should also be included in Defendant's individual life and/or disability insurance policy so that these premiums can be secured..

The Court incorporates its findings previously made and incorporated as part of spousal support determination in analyzing this issue.

It is also ordered that Plaintiff's Motion for Payment of Marital Expenses Incurred Between 09/21/04 and 01/06/2005 is granted, except that it shall extend to the date the Judgment of Divorce is entered. Defendant-father shall receive credit for any amounts he has paid during this period.

The Judgment of Divorce shall also include the agreement the parties reached on the payment of parochial school tuition.

The Court incorporates its findings from its December 21, 2004, order as follows:

STATEMENT OF FACTS

The parties in this case were married on March 13, 1981. This marriage lasted for 23½ years and produced six (6) children. Three of those children are under the age of 18.

Prior to the commencement of trial, the parties reached agreement on legal and physical

custody and a parenting time agreement. The parties also reached an agreement that Defendant would pay $800.00 per month in child support. This figure was reached by the consent of the parties as part of their negotiations concerning custody and parenting time.

This amount of $800.00 per month in child support was not based on the parties' established earnings presented at trial and calculated pursuant to the Michigan Child Support Guidelines. This amount, however, does exceed the guidelines based on the parties' income information submitted at trial.

The parties and the children have resided at the marital home located at 2800 Leland Drive, Summit Township, in Jackson County, Michigan. Plaintiff-mother is now residing in the marital home. The Defendant-father has vacated the marital home by agreement of the parties.

The Plaintiff-mother is forty-three (43) years of age. She had a very limited work history during the marriage. She did some custom interior painting jobs, although most of these were for family and friends.

During the pendency of the marriage, she worked part-time at a tanning salon. She graduated from high school and is considering additional college training.

Throughout most of the parties' marriage, the Plaintiff-mother stayed at home and raised the children while Defendant-father ran the family business.

The Defendant-father is forty-nine (49) years of age. He graduated from high school and completed 3 years of college. He left college early to create and operate a closely held family business venture with his father as a fifty percent partner.

The parties have a complicated marital estate, which will be addressed in this opinion.

FINDINGS

Based on the testimony at trial, the Court finds that the allegations in the Plaintiff-mother's Complaint for Divorce were true at the time they were filed, and that they continue to be true.

Moreover, the Court finds that there has been a breakdown of the marriage relationship, such that the objects of the marriage can no longer be preserved.

The Court also finds that there is no reasonable likelihood of marital. reconciliation. The parties previously reached an agreement of legal and physical custody and parenting time.

ISSUES TO BE DETERMINED BY THE COURT:

1. Division of marital assets
2. Division of marital debt
3. Division of personal property
4. Spousal support
5. Attorney fees

THE LAW

The division of marital assets is controlled by statute MCL 552.1 et seq; Chadeton v. Charieton, 397 Mich 84, 92; 243 NW2d 261 (1976). When apportioning the marital estate, the Court must strive for an equitable division of the assets. in Sparks v. Sparks, 440 Mich 141, 159-160; 485 NW2d 893 (1992), our Supreme Court outlined the factors that a trial court should consider when dividing marital assets:

1. duration of the marriage
2. contributions of the parties to the marital estate
3. age of the parties
4. health of the parties
5. life status of the parties
6. necessities and circumstances of the parties
7. earning ability of the parties
8. past relations and conduct of the parties
9. general principles of equity

Moreover, in analyzing these factors, the Court held that "The trial court is given broad discretion in fashioning its dispositional ruling, and there can be no strict mathematical formulations;

while the division need not be equal, it must be equitable." Id. At 158-159.

A. MARITAL HOME

The marital home of the parties is located at 2800 Leland Drive, Summit Township In Jackson County, Michigan. The Plaintiff-mother continues to reside in the marital home with several of the parties' minor children. Patrick Hoxie, a state-licensed and certified real estate appraiser estimated that the marital home has a value of $192,000.00. The current mortgage debt on the property is $46,131.00, leaving a net equity of $145,869.00. Mr. Hoxie valued this property by using the market approach as opposed to a comparable sales approach. While Plaintiff's counsel is critical of this estimate, no other appraisal of this property was offered, and the Court found it to be reasonable.

The Court finds that the Sparks factors (1), (2), (3), (5), (6), (7), (9) to be determinative in its analysis. Based on these factors, the Court holds that the Plaintiff-mother should receive the marital home and all of the equity in it. Factor number six (6), the necessities and the circumstances of the parties was especially important to the Court. The Plaintiff continues to reside in the home. It is the family home to the parties' children.

With the significant equity in the marital

home, the Plaintiffs mortgage payments will be reasonable and her continuity in the home seems equitable under the circumstances.

Therefore, the Defendant shall execute a Quit Claim Deed to the property. Plaintiff shall re-finance the home within 60 days from the entry of the Judgment of Divorce.

The Plaintiff shall also receive all of the contents, furnishings and appliances in the marital home.

The Plaintiff shall be responsible for all future mortgage payments, insurance, taxes, and other expenses associated with this property after the Judgment of Divorce is entered.

B. GALLANT INDUSTRIAL SERVICES

The Defendant started Gallant Industrial Services in 1976. According to his testimony at trial, he left college after three years to begin this business. He testified that the purpose of Gallant Industrial Services was to provide "expedited transport services".

The Defendant testified that in 1976, the trucking industry was heavily regulated, requiring both state and federal licenses to engage in commercial operations. The business began to gradually grow. In 1978, Gallant Industrial Services

was incorporated and the Defendant was joined in the business by his father as a partner.

During this time from 1976 – 1978, the Defendant became involved in fluid. management operations and developed into the exclusive distributor in Michigan for an industrial fluid, which was sold to businesses to reduce their manufacturing costs. Over time, Gallant Industrial Services specialized in fluid management as an outsource for other businesses.

According to the Defendant's testimony, between 1976 and through the mid-1980's, Gallant Industrial Services had separate business operations in both fluid management and transportation. During this time frame, the business grew and was successful.

Defendant testified that after the early 1980's, Gallant Industrial Services had some very profitable years, and other years where the business struggled.

One 'of the major factors that impacted the profitability of Gallant Industrial Services and Gallant Transport, Inc., was the deregulation of the trucking business, which greatly enhanced competition and reduced earlier historic profits.

Another factor was a diminished role in trucking operations to a changing and restructuring

automotive business in Michigan. Given these developments, Defendant's expert, Dr. William King, testified that Gallant Industrial Services has little value today, and is not likely to return to the financial prosperity it enjoyed in earlier years.

While Dr. King opined that Gallant Industrial Services has little value in a current appraisal, he attached a value to its current state of operations at $20,000.00.

The Plaintiffs expert, Edward Dupke, gave Gallant Industrial Services a current appraisal of zero.

Under cross-examination; if you considered debt, loans, and other operating expenses, Gallant Industrial Services could even have a negative value. The Court finds that, in balancing the experts' value of zero and $20,000.00, that a reasonable value of Gallant Industrial Services is $10,000.00.

C. GALLANT TRANSPORT, INC.

In valuing Gallant Transport, Inc., Dr. King applied various business valuation methods, and opined that it had a value of $185,670.00.. The Plaintiff's expert, Mr. Dupke, opined that Gallant Transport, Inc., had a market value of $244,000.00. Dr. King agreed that this figure was reasonable, as. was his appraisal. Experts from both parties place the fair market value of Gallant Transport, Inc.,

between $185,670.00 and $244,000.00. An average between these two is $214,835.00.

The Court finds the average between the two experts' appraisals at $214,835.00 as a reasonable determination of the fair market value of Gallant Transport, Inc.

After considering the other methods of valuation testified to by both experts, the Court finds the fair market value of $214,835.00 as the most reliable evaluation of Gallant Transport, Inc.

Based on the fluctuations in value of Gallant Transport, Inc., and Gallant Industrial Services over the years during the marriage, the Court believes it would be inequitable to arbitrarily apportion a value of these to business entities as a premarital interest offset to the Defendant.

In his brief, Defendant argues that a 30% value should be placed on the Defendant's premarital interest, resulting in Gallant Transport, inc., having an adjusted marital value of $150,384.50. ($214,835.00 – 30%)

The Court finds this 30% premarital interest adjustment to be arbitrary and unequitable under the circumstances. Especially since there has been a huge fluctuation in the value of the company in the 1980's to its much lessened appraisal today.

Even if there was an ascertainable premarital interest of the Defendant in Gallant Transport, Inc., case law holds that separate property may also be divided on the basis of contribution. Where a party contributed to the "acquisition, improvement or accumulation of the property, the Court may award the party a share of the other's separate estate." Hannawav v. Hannawav, 208 Mich 278, 528 NW2d 792 (1995).

The Court concluded that Sparks factors (1), (2), (3), (4), (5), (6), (7), and (9) to be determinative in its analysis. Based on the duration of the marriage and the significant contributions of the Plaintiff's staying at home, maintaining the marital home so the Defendant could run the business, it seems inequitable to try and apportion a premarital value allocation of the business as argued by the Defendant.

D. J & J REAL ESTATE

J & J Real Estate is also part of the marital estate. Its principal asset is the businest property located at 3519 Wayland Drive, Jackson, Michigan.

This building was purchased pursuant to a partnership between the Defendant and his father. As a result, fifty percent (50%) of the value of this property would be a marital asset

Plaintiffs expert, Mr. Dupke, concluded the partnership asset had a value of $404,000.00. The

Court did not find this income driven appraisal as reasonable. Mr. Dupke relied in reaching this figure on the opinion of the Plaintiff's real estate appraiser, Thomas D. Hardwick.

The Court did not find the manufacturing comparables used by Hardwick reliable. By using manufacturing comparables to try and determine the value of a business used for trucking was not a fair comparison. The manufacturing comparables used by Hardwick and Dupke resulted in a skewed comparison that over-valued the business property at issue.

The Defendant's expert, Patrick Hoxie, opined that this comparison approach was inappropriate given the lack of similar properties.

The Court concluded, after weighting the testimony of the experts, that a replacement cost analysis of the partnership asset to be the most reliable for a valuation of the partnership asset.

Mr. Hardwick did a similar evaluation, but multiplied square footage by construction costs from an undisclosed journal. However, Mr. Hoxie's opinion Went beyond trade journals and was based on a comprehensive analysis of the costs of constructing a replacement partnership asset.

After a research of this approach, Mr. Hoxie opined that the building located at 3519

Wayland Drive, Jackson, MI, had a current value of $230,000.00. The Court found this valuation to be the most credible and reliable.

Mr. Hoxie testified that the costs of constructing a similar building would be $202,000.00. This figure was based on a calculation using current suppliers and local contractors.

The Defendant testified that the true cash value of the land according to the State of Michigan was $39,204.00.

This resulted in a complete replacement cost of $241,204.00, which the Court found to be the most reliable of the evaluations.

Moreover, Mr. Hoxie also credibly testified that by using a 50% depredation factor calculated with the age of the 35 year-old building, that the net depreciated building would be $140,204.00. This left Defendant with a fifty percent partnership asset of $70,000.00.

In applying the Sparks factors, the Court considered the following factors applicable: (1), (2), (3), (4), (5), (6), (7), (8), and (9). All were relevant to the Court in determining the division of the business aspects of the marriage.

In dividing the business interest of the marital estate, the Court finds that factor (7), the earning

ability of the parties, to be the most determinative factor. Gallant Industrial Services, Gallant Transport, Inc., and J & J Real Estate are essentially all the components of a closely held family business in which the parties have a fifty percent interest as part of the marital estate.

As a closely held family business, the components realistically cannot be severed and sold on the open market. Defendant's income earning ability in the future will be predicated on leaving the marital business assets intact.

Defendant's expert, Mr. King, also testified that if the business assets were dissolved and liquidated, then Mr. Gallant's future income earning ability would be compromised, as would the source of the $800.00 in child support per month he has already agreed to.

In dividing the marital assets, the Court believes it equitable to award Defendant all of the marital interest In Gallant Industrial Services, Gallant Transport, Inc., and J & J Real Estate.

To achieve an equitable distribution, the Court has the 'ability to offset this award of marital assets to the Defendant by allowing the Plaintiff a corresponding offset of the 401 K pension plan, and in the equity in the marital home.

The Court also heard testimony that Gallant

industries had several pontoons that were used for purposes of business entertaining. While arguably Defendant would have a fifty percent interest in these business interests, the Court is awarding this to the Defendant. The Court notes the value in these used pontoons was offset by Plaintiff receiving the vast majority of the furnishings of the marital home. With no specific values on either the used pontoons or the value Of the furnishings of the marital home, the Court considers this an equitable offset.

E. 401K

Included for the division in the marital estate is Defendant's 401 K Profit Sharing Plan which, as of July 12, 2004, had a value of $488,787.62.

Therefore, the marital estate is divided as follows:

Plaintiff-mother

1. $145,869.00 (net equity in marital home)
2. $318.876.81 (distributive equitable share of 401K)
   $464,745.81

Defendant-father

1. $ 10,000.00 (Gallant Industrial Services)
2. 214,835.00 (Gallant Transport, Inc.)
3. 70 000.00 (J & J Real Estate)
   $294,835.00 (net partnership marital interest total)
4. 169.910.81 (adjusted interest in 401K)
   $464,745.81

The Court notes that Defendant's 401K Profit Sharing Plan was valued as of July 12, 2004. Pursuant to the Court's distribution of the 401K based on these numbers, Plaintiff-mother should receive $318,876.81. Defendant-father shall receive $169,910.81 of the 401K. Any remaining 401K value after the aforementioned distribution, based on an increase in valuation since July 12, 2004, shall go to the Plaintiff-mother.

F. INVESTMENT ACCOUNTS

The Plaintiff submitted statements regarding the Smith-Barney Investment Accounts. The Court recalls granting authority of the parties to deplete these marital assets for the purpose of paying experts and for meeting the parties monthly household expenses. As of the date of trial, these accounts had zero balances have been equitably divided.

The Court finds that the remaining Smith-Barney IRA in the amount of $11,000.00 is a premarital asset and is awarded to the Defendant as his separate property.

G. MARITAL DEBT

Each party shall be responsible for any debt incurred in their own name since the filing of the Complaint for Divorce. Any other marital debt not

discussed in other provisions of this opinion shall be split equally by the parties. Each party shall keep the vehicle in their possession and shall be responsible for the payment on it, and have it refinanced in their own name within 60 days after the entry of the Judgment of Divorce.

H. DIVISION OF PERSONAL PROPERTY

The parties had largely distributed the personal property before the trial in this matter. Each party shall receive the personal property currently In their possession as of the date of this order.

I. ATTORNEY FEES

The Court denies awarding attorney fees to either party, as costs were addressed during the pendency of this action. Each party shall be responsible for attorney fees incurred in this matter.

J. SPOUSAL SUPPORT

The Plaintiff-mother in this matter has made a claim for spousal support. In Thames v. Thames, 191 Mich App 299, 308; 477 NW2d 496 (1991), the Court set forth the factors that a trial court should consider when deciding whether to award spousal support:

(1) the past relations and conduct of the parties
(2) the length of the marriage

(3) the abilities of the parties to work
(4) the source and amount of property awarded to the parties
(5) the parties' ages
(6) the abilities of the parties to pay alimony
(7) the present situation of the parties
(8) the needs of the parties
(9) the parties health
(10) the prior standard of living of the parties and whether either is responsible for the support of others
(11) contributions of the parties to the joint estate, and
(12) general principles of equity.

In addition, the Court may consider a party's fault in causing the divorce.

The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Moore v. Moore, 242 Mich App 652, 654; 619 NW2d 723 (2000). The trial court should base its award of spousal support on what is just and reasonable under the circumstances. Id.

Plaintiff submitted a spousal support work-up to the Court. One problem with this calculation is Defendant's income. Testimony at trial indicates that Defendant receives a $500.00 weekly salary from Gallant Industrial Services. in addition to this salary, the Defendant receives, once a year, one-

half of the net rental proceeds from J & J Real Estate.

According to the evidence, in 2002, Defendant had W-2 earnings of $25,000.00 from Gallant Industrial Services, and an additional $5,288.00 for interest income, for a total of $32,623.00. In 2003, Defendant had a total income of $16,000.00 in wages from Gallant Industrial Services and rental income of $10,326.00 for a total of $26,326.00.

Defendant offered the Craig Ross Program, 2003, which placed the Plaintiff at $10,000.00 annually, which also included $800.00 monthly child support. Defendant was calculated at an annual salary of $32,000.00. The Ross Program, utilizing these figures, suggests a zero alimony award.

The Plaintiff and Defendant offer contrasting positions of spousal support. In analyzing the facts of this case, the Court is not unmindful that the Defendant has authority to increase his income and, based on past earnings, it is persuasive that 2002 and 2003 do not properly consider an unexercised ability to earn income at a level consistent with compensation he received in earlier years.

To resolve this, the Court examined the Thames factors:

Past Relations and Conduct of the Parties

The Plaintiff argued that the Defendant is somewhat more at fault for the breakdown in the marriage due to his conduct during the marriage. The Court did not find this supported by the evidence at trial and does not find that this factor favors either party.

Length of the Marriage

This is a twenty-three and one-half year marriage, which produced six children. As previously noted, the Plaintiff has had minimal employment during the marriage. She did this to allow Defendant to direct his energies in supporting the family financially. In Denman v. Denman, 195 Mich App 109; 489 NW2d 161 (1992) spousal support was awarded in a twenty-three (23) year marriage. The Court finds that this factor favors the Plaintiff.

Ability to Work

In determining spousal support, an important factor is the ability of each party to financially support themselves. With the distribution of marital business assets awarded to the Defendant, it is contemplated that his ability to work and support himself is established. The Court reviewed his W-2's for both 2002 and 2003, as previously discussed.

The Plaintiff-mother, however, has had very little work experience outside of the marriage. She is currently working part-time at a tanning salon at an hourly wage barely above minimum wage. Therefore, the Plaintiff's ability to support herself based on past work experience and current work skills is limited. The Plaintiff would like to go back to college to gain the ability to work at a level where she could more effectively support herself. Plaintiff presents an effective argument for short-term rehabilitative alimony while Plaintiff goes back to college. Plaintiff argues persuasively that a spousal support award should be sufficient enough so that she will not be required to dissipate her property award and marital assets to meet her daily needs while acquiring new job skills. McClain v. McClain, 108 Mich App 166; 310 NW2d 316 (1981). The Court finds that this factor strongly favors the Plaintiff-mother.

Source and Amount of Property Awarded

Property awards given to each party have been considered in determining whether to award spousal support. The Court is not unmindful that it has awarded significant marital assets to the Plaintiff-mother in this order in apportioning the marital assets. However, in Hannawav v. Hannawav, 208 Mich App 278; 527 NW2d 792 (1995), the Court held that the income-producing potential of the wife's property settlement, not its overall value, should be considered in evaluating her claim for

spousal support. The Court finds that this factor favors the Plaintiff-mother.

Age of the Parties

Age is a factor in determining spousal support issues, especially as it impacts on a parties' ability to support themselves.

The Defendant is (49) years old and is in an established family business with years of experience in the workplace. Plaintiff-mother is (43) years old, a mother of six children, with three children under the age of 18. She has spent most of her 23 1/2 married years staying at home with the children and managing the home so the Defendant-father could concentrate on the business, which accounted for the vast majority of the marital income. This factor favors the Plaintiff-mother.

Ability to Pay

The ability to pay spousal support includes the unexercised ability to earn income, if a party voluntarily reduced their income level to avoid paying spousal support. Knowles v. Knowles, 185 Mich App 497, 462 NW2d 777 (1970). The Court finds that the Defendant has an ability to pay child support and could even increase his level of partnership contribution. There is also the issue as to whether Defendant has an unexercised ability to earn a higher level of income. The Court finds that this

factor favors the Plaintiff-mother.

Present Situation

The Court considered the parties' present situation and the fact that the Defendant agreed to pay $800.00 in child support.

Need

The Court also considered the unique need of the Plaintiff-mother for spousal support. This is based on her limited employment history and an inability to earn a sufficient income without further education or job skills. This factor favors the Plaintiff-mother.

Health of the Parties

The Court finds that both of the parties have good physical and mental health. This factor does not favor either party.

Prior Standard of Living

The Court considered the parties' prior standard of living before the divorce. The Plaintiff-mother argues that she is entitled to spousal support necessary to insure that she is not deprived of her right to support at a level commensurate with what she would have enjoyed had the marriage survived. Denman v. Denman, 195

Mich App 109 (1992). The Court finds this factor favors the Plaintiff-mother.

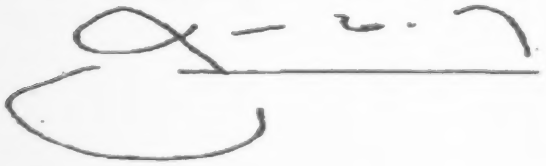
General Principles of Equity

Based on all of the factors discussed above, and based on equitable considerations, the Court awards Plaintiff-mother spousal support in the amount of $700.00 per month for the next five (5) years. The Court finds that five years is an appropriate term to help the Plaintiff acquire additional job training and/or college to enhance her ability to make a more sufficient income. Under the circumstances of this case, the Court awards Plaintiff-mother $700.00 per month in rehabilitative alimony for the next five (5) years, after the entry of the Judgment of Divorce.

Preparation of Judgment of Divorce

The Court will require the Plaintiff to prepare a Judgment of Divorce containing all required provisions, accurately reflecting the Court's findings and order within 21 days. All previous orders not inconsistent with this order shall remain in full force and effect.

IT IS SO ORDERED this 27th day of June, 2005.



John G. McGain P47476
Circuit Judge/Family Division

Tr Ct's Original Judgment of Divorce **Appendix G**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
FAMILY DIVISION

Teri Lynn Gallant,
Plaintiff

-v-

Jon Andrew Gallant, Jr.,
Defendant

File No. 03-002034 DM
Honorable John G. McBain
JUDGMENT OF DIVORCE

Philip B. Navarre, P38819
Attorney for Plaintiff
605 W. Michigan Avenue
Jackson, Michigan 49201
(517) 787-1300

William G. Rappleye, P41592
Attorney for Defendant
2002 Spring Arbor Road, Suite A
Jackson, Michigan 49203
(517) 787-5811

At a session of said Court, held in the City of Jackson, Michigan on this 6th day of January, 2005

PRESENT: Honorable John G. McBain,
Circuit Court Judge

This cause having been brought on to be heard upon the Complaint filed therein, and taken as confessed by the Plaintiff from which it satisfactorily

appears to this Court that the material facts alleged In said Complaint are true and that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage relationship can be preserved, and on motion of Philip B. Navarre, attorney for the Plaintiff; and the Court being otherwise fully advised in the premises, therefore;

IT IS HEREBY ORDERED AND ADJUDGED by this Court by virtue of the authority therein vested, and in pursuance of the statute in such case made and provided, that the marriage between the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, Jr., be, and the same is hereby dissolved, and a divorce from the bonds of matrimony between said parties is also ORDERED AND ADJUDGED.

CUSTODY OF MINOR CHILDREN

T IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant and the Defendant, Jon A. Gallant, Jr. shall have Joint legal and shared physical custody of the parties' minor children herein, namely:

Darcie Gallant	
Date of Birth:	March 10, 1988
Social Security Number:	XXX-XX- 7773
Jon Gallant	
Date of Birth:	December 9, 1990
Social Security Number:	XXXX-XX-0472

Madison Gallant,
Date of Birth: July 3. 1998
Social Security Number: XXX-XX-6145

until said children reach the age of eighteen (18) years or graduate from high school,
whichever later occurs, or until further Order of this Court.

INALIENABLE RIGHTS OF MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall consult with each other and keep each other informed as often as may be necessary concerning the major medical, dental, optical, orthodontic and/or mental health problems that the minor children may develop; the furtherance of any specific talents expressed by the minor children in any art form, including, but not limited to, music, dance or athletics; any religious beliefs that shall be practiced and included in the rearing of the minor children.

IT IS FURTHER ORDERED AND ADJUDGED that each of the parties shall take all measures deemed advisable to foster a feeling of affection between the minor children and the other party, and neither party shall do anything which may estrange the minor children from the other party, or impair the high regard of the minor children for the other party.

IT IS FURTHER ORDERED AND ADJUDGED

that neither party shall expose the minor children to any situation which may be detrimental to the health or mental well being of the minor children. Further, neither party shall use the minor children for purposes of delivering messages between the parties, or gathering information about the private activities of the parties.

DOMICILE OF MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the domicile of the parties' minor children shall not be removed from the State of Michigan without the prior written approval of the Judge or their successor who awarded custody.

IT IS FURTHER ORDERED AND ADJUDGED that a parent whose custody or parenting time of a child or children is governed by this Judgment, shall not change the legal residence of the child or children, except in compliance with Section 11 of the Child Custody Act of 1970; 1970 PA 91; MCL 722.31. Except as otherwise provided in Section 11 of the Child Custody Act, a parent whose custody is governed by a Court Order shall not change a legal residence of the child to a location that is more than one hundred (100) miles from the child's legal residence at the time of the commencement of the action in which the Order is issued.

CHILD SUPPORT AND CHILD CARE EXPENSES

IT IS FURTHER ORDERED AND ADJUDGED that

based on the Shared Economic Responsibility, the Defendant, Jon A. Gallant, Jr., shall pay to the Plaintiff, Teri L. Gallant, the sum of Eight Hundred and 00/100 ($800.00) Dollars per month for the support and maintenance of the minor children. This amount of $800.00 per month in support was not based on the parties established earnings presented at trial.

IT IS FURTHER ORDERED ADJUDGED that the issue of child care is reserved.

SPOUSAL SUPPORT

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, *Jr.*, is ordered to pay the Plaintiff, Teri L. Gallant, spousal support in the amount of Seven Hundred and 00/100 ($700.00) Dollars per month for the nextfive (5) years, commencing with entry of this Judgment of Divorce. Said spousal support shall not be includable in income to the Plaintiff, Teri L. Gallant, and is not deductible from income of the Defendant, Jon A. Gallant, Jr., as defined by IRC Sec. 71 payments.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is not entitled to spousal support and none Is reserved.

IT IS FURTHER ORDERED AND ADJUDGED that unless otherwise ordered, child support and spousal support shall be paid by income withholding order when available, through the Friend of the Court or Michigan State Disbursement Unit. The Michigan State

Disbursement Unit and the Friend of the Court are hereby directed to transmit all sums of money so paid to the Plaintiff, Teri L. Gallant, at her address or at such other address as she may be residing from time to time. **Payment made for child support shall commence on January 1, 2005.** Unless otherwise ordered, this order continues until each minor child is age eighteen (18) years, and up to the age of nineteen and one-half (19½) years for the time that; (i) the child is a full-time student; (ii) the child Is regularly attending high school; (iii) there is a reasonable expectation of completing sufficient credits to graduate; and (iv) the child is residing with the payee of support/custodial parent, or an institution while attending high school, or until further Order of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr,, shall pay to the Friend of the Court or the Michigan State Disbursement Unit the statutory fee of Three and 50/100 ($3.50) Dollars per month, payable semi-annually on January 2nd and July 2[1]'. The statutory fee shall be computed from the beginning date of this support and shall continue while this Judgment of Divorce is operative. The service charge shall be paid six (6) months in advance on each of the due dates except for the first payment which shall be paid at the same time as this Judgment of Divorce is filed and shall cover the period of time from the date hereof to the next calendar due date. The Friend of the Court or Michigan State Disbursement Unit may

deduct the service charge from any monies paid after the due date of the service charge. The Friend of the Court or Michigan State Disbursement Unit is hereby authorized and directed to transmit to the County Treasurer of this County the sums so paid under this provision of this Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that if the Plaintiff, Teri L. Gallant, shall receive public assistance, then the Jackson County Friend of the Court is directed to transmit the child support payments to the Family Independence Agency or an appropriate agency in another state.

IT IS FURTHER ORDERED AND ADJUDGED that if either party receives unemployment compensation, he or she shall inform the Jackson County Friend of the Court as to the Michigan Employment Security Commission office or comparable office in another state from which such compensation is paid.

IT IS FURTHER ORDERED AND ADJUDGED that any child support arrearage owing to the State of Michigan is hereby preserved, whether the arrearage arose under a Temporary Child Support Order or under a separate Judgment.

IT IS FURTHER ORDERED AND ADJUDGED that if an arrearaga exists when child support is

otherwise scheduled to cease under the Judgment of Divorce, support payments shall continue at the regular support rate then in effect until said arrearage is paid in full.

CONTINUING DUTY TO NOTIFY FRIEND OF THE COURT

IT IS FURTHER ORDERED AND ADJUDGED that both the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, Jr., shall promptly notify and update the Friend of the Court, in writing, within twenty-one (21) days, whenever the parties move to another address; whenever the minor children are moved to another address; whether the parties hold an occupational license and driver's license; the name and address of the parties' current employer and other sources of income; and any health insurance coverage available as a benefit of employment or changes in same. As used herein, *"source of income" means* that term as defined in Section 2 of the Support and Visitation Enforcement Act, Act No. 295 of the Public Acts of 1982, being Section 552.602 of the Michigan Compiled Laws.

NOTICE TO FRIEND OF THE COURT

The present address of the Plaintiff, Teri L. Gallant, is 2800 Leland, Jackson, Michigan, 49203; her telephone number Is (517) 784-3749; her date of birth is July 25, 1961; and her Social Security Number is XXX-XX-4393. Plaintiff does not hold an occupational

license. Plaintiffs driver license number is G 453 789 564584. The name and address of Plaintiff's current employer Is Catch-A-Ray Tanning Boutique, 811 McDevitt Avenue, Jackson, Michigan 49203 (517) 782-2999.

The present address of the Defendant, Jon A. Gallant, Jr., is 1741 Lochmoor Boulevard, Jackson, Michigan, 49201; his telephone number is (517) his date of birth is 04-13-1955; and his Social Security Number is XXX-XX-2013 Defendant does not hold an occupational license. Defendant's driver license is G 453 435 067 288. The name and address of Defendants employer is Gallant Industrial Services, Inc., 3519 Wayland, Jackson, MI 49202 (517) 784-2857.

NOTICE TO FRIEND OF THE COURT REGARDING ARREARAGE

The Defendant's child support obligation commences January 1, 2005.

AUTHORITY OF INCOME WITHHOLDING

IT IS FURTHER ORDERED AND ADJUDGED that an Income Withholding Order shall be entered pursuant to MCLA 552.501, at seq., MSA 25.176(1), et seq., and MCLA 552.601, at seq.; MSA 25.165(1) et seq., if arrearage in support exceeds an amount equal to four (4) weeks payments. if an Income Withholding Order is entered under the provisions of MCLA 552.601, at seq.; MSA 25.164(1), et

seq., and the fixed amount of arrearage is reached, the office of the Friend of the Court shall send notice of the arrearage to the payer by ordinary mail addressed to payer's last known address. The income Withholding Order shall take effect fourteen (14) days after the date of the notice unless the payer responds by requesting a hearing or by paying the arrearage in full.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall keep the Friend of the Court informed of their current employer, employer's address, and any health insurance coverage available as a benefit of employment.

SUPPORT AND VISITATION ENFORCEMENT ACT

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided in Section 3 of the Support and Visitation Enforcement Act, No. 296 of the Public Acts of 1982, being Section 552.603 of the Michigan Compiled Laws, a Support Order that is part of a Judgment of Divorce is an Order in a domestic relations matter as that term is defined In Section 31 of the Friend of the Court Act, Act No. 294 of the Public Acts of 1982, being Section 552.531 of the Michigan Compiled Laws, is a Judgment on and after the date each support payment is due, with the full force, effect, and attributes of a Judgment of this State, and is not, on and after the date it is due, subject to retroactive modification. A *fee* will be added to

support payments that are past due as provided in Section 3(a) of the Support and Visitation Enforcement Act, being Section 552.603(1) of the Michigan Compiled Laws.

IT IS FURTHER ORDERED AND ADJUDGED that on January 1st and July 1st of each year, additional support calculated at an eight (8%) percent annual rate shall be added to support payments that are past due as of those dates.

MEDICAL AND HOSPITALIZATION INSURANCE

IT IS FURTHER ORDERED AND ADJUDGED that both parties shall maintain hospital and medical insurance for the minor children as is available through their places of employment at minimal or reasonable cost. Any ordinary and extraordinary medical, dental, optical and health care expenses for the parties' minor children which are not reimbursed by any policy of insurance shall be divided and paid by the Plaintiff, Teri L. Gallant, contributing Twenty-Four (24%) percent and the Defendant, Jon A. Gallant, Jr., contributing Seventy-Six (76%) percent. The Health Care Provider is PHP, Member #52156-XXX-XX-2013; Name of Insured, Jon A. Gallant, Jr.; The Dental care provider is: Companion Life, ID# D368622013, GRP: 903-14-77946-000. Health care means products or services provided or prescribed by a person or organization licensed or legally authorized to provide or prescribe human health care products or services. If

any of the uninsured health care expenses are paid by the custodial party which are the responsibility of the non-custodial party, such payment shall be reimbursed to the custodial party by the non-custodial party upon presentment to the non-custodial party of proof of treatment, including diagnosis, an itemized billing and proof of payment; that after such presentment, any such bill remaining unreimbursed for more than thirty (30) days may be brought to attention of the Friend of the Court for enforcement as though it was support. In the event this course of action is necessary, the at fault party shall be responsible for any and all costs and fees, including actual and reasonable attorney fees, associated with this provisions enforcement.

IT IS FURTHER ORDERED AND ADJUDGED that the hospital and medical insurance provisions and division of health care expenses for the parties' minor children enumerated above shall continue untilthe minor children have reached the age of eighteen (18) years and up to the age of nineteen and one-half (19 %) years for the time that: (i) the child Is a full-time high school student; (ii) the child is regularly attending high school; (iii) there is a reasonable expectation of completing sufficient credits to graduate; and (iv) the child is residing with the payee of support/custodial parent, or an institution while attending high school, or until further Order of this Court.

PARENTING TIME WITH MINOR CHILDREN

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded parenting time with the parties' minor children as follows:

Alternate weekends from Friday after school until Tuesday morning when the children go to school.

Monday from after school until Wednesday morning when the children go to school on alternate weeks.

The parties shall equally share Christmas break (50/50).

The parties shall alternate Spring break with the Defendant, Jon A. Gallant, Jr., having the odd numbered years.

The parties shall equally share the summer vacation on a weekly basis, with each party having two uninterrupted weeks.

The Plaintiff, Teri L. Gallant, shall have the first three days after school is out for the summer, and she also shall have the last four days of summer vacation that precede the start of school.

The parties shall have holiday parenting time pursuant to mutual written agreement. Absent said agreement the holiday parenting time shall be in accordance with the current Jackson County Parenting Time Holiday Schedule .

ANTI-BANKRUPTCY CLAUSE

IT IS FURTHER ORDERED AND ADJUDGED that the parties acknowledge that each is accepting liability for, and holding each other harmless from certain debts upon which the parties are jointly liable.

Further, it is the express intention of the parties that this distribution of debt is intended to provide each other with the ability to support themselves without direct alimony payments by the opposite spouse. It is therefore agreed by the parties.

IT IS FURTHER ORDERED AND ADJUDGED that In the event either party fails to pay any amount due under the above-described credit agreements or other joint liabilities described herein, and the opposite spouse pays said obligation (or any portion thereof) voluntarily, or is compelled to pay the same by Court order or otherwise, then this Court shall order the defaulting party to pay the opposite spouse spousal support in an amount deemed appropriate under the circumstances.

IT IS FURTHER ORDERED AND ADJUDGED that the parties further agree that the above described spousal support payments are not deductible from the defaulting spouse's gross income or are they able to be included In the payer spouse's gross income pursuant to IRS Temp Reg 1.711 TQ-8. In no event shall the defaulting spouse be required to pay spousal support for any period after the payer spouse dies, or to make any payments in cash or property, as a substitute for spousal support after the payer spouse dies.

IT IS FURTHER ORDERED AND ADJUDGED that the parties acknowledge and agree that in the event that either party was to file bankruptcy, or in

the event an involuntarily petition of bankruptcy Is filed against either, that the benefit to the bankrupt party in discharging his or her indemnity obligation to the other party would *be* outweighed by the detrimental consequences of such discharge to the other party. The parties acknowledge and agree that their indemnity obligations are non-dischargeable in bankruptcy as provided under Section 523(a)(15) of the Bankruptcy Code.

PROPERTY SETTLEMENT AND PROVISION IN LIEU OF DOWER

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Ten L. Gallant, is awarded the right to claim the parties' minor children, Darcie Gallant, d/o/b March 10, 1988, Jon Gallant, d/o/b December 9, 1990, and Madison Gallant, d/o/b July 3, 1996, for income tax exemption for federal, state, and local tax purposes for the year 2004 and all years following until said children cannot be claimed.

The Defendant shall execute income tax form 8332, "Release of Claim to Exemption for Child of Divorce or Separated Parents", relating to the parties' minor children.

CHILD TAX CREDIT

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to the I RC Sec. 24, the Plaintiff, Ten L. Gallant, is awarded the right to claim the Child Income

Tax Credit for the parties' minor children, Darcie Gallant, d/o/b March 10, 1988, Jon Gallant, d/o/b December 9, 1990, and Madison Gallant, d/o/b July 3, 1996, for the year 2004 and all years following until said credit cannot be taken, or said parent does not qualify.

IT IS FURTHER ORDERED AND ADJUDGED that the marital home commonly known as 2800 Leland, Jackson, Michigan, and more particularly described as land situated in the Township of Summit, County of Jackson and State of Michigan, to-wit:

> LOTS 45 AND 48 LEE WILLA-LOR ACRES EXTENSION NO. 3, AS RECORDED IN LIBER 1090, PAGE 968, JACKSON COUNTY RECORDS.

is awarded solely to the Plaintiff, Teri L. Gallant, along with any and all equity and liability of the marital home.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, shall re-finance the marital home within sixty (60) days from the entry of this Judgment of Divorce,

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, shall be responsible for all future home equity payments, future insurance, future taxes, and other future expenses

associated with this property which become due in 2005 after the Judgment of Divorce is entered and shall indemnify and hold the opposite party harmless therefrom and keeping same current.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., shall sign a Quit Claim Deed granting any and all of his interest in the marital home to the Plaintiff, Teri L. Gallant, within sixty (80) days from the entry of this Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that the provisions made herein for each party shall be in lieu of their dower or other spousal rights In the property of the opposite party and they shall hereafter hold the remaining landt and property, free, clear and discharged from any and all dower or other spousal rights or claims and said provisions shall be in full satisfaction of all claims each may have in any property of the opposite party or may hereafter own or which they have or may hereafter have an interest.

PERSONAL PROPERTY

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded all of the contents, furnishings, and appliances In the marital home.

IT IS FURTHER ORDERED AND ADJUDGED

that the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, Jr., have divided the personal property equitably between themselves. The parties shall retain the personal property in their possession as of December 21, 2004, as their sole and separate property,

IT IS FURTHER ORDERED AND ADJUDGED that each party shall retain as their sole and separate property, free and clear of any claim by the other party, the real and personal property then or hereafter titled In their respective names or held in their respective possessions, except as otherwise stated within this Judgment of Divorce.

IT IS FURTHER ORDERED AND ADJUDGED that any lien, encumbrance, or obligation on any property awarded to a party herein shall be the sole and separate liability of the party receiving the property, and shall 'indemnify and hold the opposite party harmless therefrom, unless otherwise specifically provided for in this Judgment of Divorce.

BANK ACCOUNTS

IT IS FURTHER ORDERED AND ADJUDGED that each party will retain any funds they have in bank accounts, free and clear of any claim by the other party.

BUSINESS ASSETS

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded any and all interests in the family businesses, being Gallant Transport, Inc., Gallant Industrial Services, Inc., and J & J Real Estate.

MARITAL DEBT

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and Defendant shall be responsible for any debt incurred in their own names since the filing of the Complaint for Divorce, and each party shall indemnify and hold the other harmless from any liability in connections therewith.

IT IS FURTHER ORDERED AND ADJUDGED that any other marital debt not discussed in other provisions of this Judgment of Divorce shall be split equally by the parties, and each party shall indemnify and hold the other harmless from any liability on their part in connections therewith.

IT IS FURTHER ORDERED AND ADJUDGED that each party shall keep the vehicle in their possession, shall be responsible for the payment thereon, and shall refinance any debt thereon in their own name within 60 days after entry of this Judgment of Divorce.

INSURANCE PROVISIONS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded one-half of any life insurance policy and proceeds to which the Defendant, Jon A. Gallant, Jr., has an ownership interest in as a 50% shareholder in Gallant Industrial Services, Inc., and Gallant Transport, Inc., and the name of the insurance company is The Equitable Life Insurance Company ("AKA Equitable"), policy #39251980 for Jon A. Gallant, Jr. and policy #392529252925292529252472 for Jon Sr. Further, the Defendant, Jon A. Gallant, Jr., shall ensure timely premium payment on the above stated policies for both the Defendant, Jon A. Gallant, Jr.*'s* policy, and on the policy ofthe Defendant's father, Jon A. Gallant, Sr.. Further, the Defendant, Jon A. Gallant, Jr., is to provide, to Plaintiff, Teri L. Gallant, documentation that all policy premiums are timely paid at least once per year. Further, the Plaintiff, Teri L. Gallant, shall be provided with copies of all notices on said policies in advance of any changes at 2800 Leland Drive, Jackson, Michigan, 49203, or such further address as she may designate in writing. Further, if either Defendant, Jon A. Gallant, *Jr.* or Defendant's father, Jon A. Gallant, Sr.. pre-deceases the Plaintiff, Teri L. Gallant, then the Plaintiff, Teri L. Gallant, shall be entitled to one-half of the proceeds of all of the aforementioned Insurance policies. Further, the Plaintiff, Teri L. Gallant, shall be designated as an irrevocable 50% beneficiary on all life insurance policies. Further, there shall be no change in the face amount of coverage on said policies. Further, the Defendant, Jon A.

Gallant, Jr., shall not only be responsible for full payment of the premiums on these policies, there also shall be no change of beneficiaries that would contravene this order.

IT IS FURTHER ORDERED AND ADJUDGED that, as except as provided herein, all rights of each party in and to the proceeds of any policy or contract of life insurance, endowment or annuity upon the life of the opposite party in which he or she was named or designated as beneficiary, or to which they became entitled by assignment or change of beneficiary during the marriage, or in anticipation thereof, are hereby terminated and any such contracts or policies of insurance shall hereafter be payable to the estate of the respective party or to such other person or persons as they may hereafter designate as beneficiary thereof.

PENSION OR RETIREMENT BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, Teri L. Gallant, is awarded the amount of Two Hundred Eleven Thousand Four Hundred Fifty-Nine and 31/100 ($211,459.31) Dollars from the Defendant, Jon A. Gallant, *Jr.'s* 401-K Profit Sharing Plan through the family business, being Gallant 401(K) Profit Sharing Plan, Contract Number 4-44214, Plan Type: 401(K). **Further,** the Plaintiff, Teri L. Gallant, is awarded any increase in the value of the 401-K Profit Sharing Plan since July 12, 2Q04, and is entitled to a lump sum distribution of an amount up to

the entire amount awarded to her, and that distribution Is permitted under I RC 414(p). The Plaintiffs mailing address for purposes of QDRO distribution from the Gallant 401(K) Profit Share Plan shall be c/o Navarre & Navar[r]e, Lawyers, PLC, 605 W. Michigan Avenue, Jackson, Michigan 49201.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Jon A. Gallant, Jr., is awarded the Smith-Barney IRA account in the amount of approximately $11.000.00.

IT IS FURTHER ORDERED AND ADJUDGED that any Interest that either of the parties hereto may now have or may heretofore have had in any insurance, endowment, pension, annuity, retirement benefits,. deferred compensation, individual retirement accounts (IRA), contracts or policies of the other party, any accumulated contributions in any pension, annuity, or retirement system, and any right or contingent right in and to unvested pension, annuity or retirement benefits shall be and the same are hereby extinguished, and each party shall, in the future, hold all such interests free and clear from any right or Interest which the other party now has or may heretofore have had therein or thereto by virtue of being the beneficiary, the contingent beneficiary or otherwise, EXCEPT AS OTHERWISE PROVIDED FOR HEREIN.

IT IS FURTHER ORDERED AND ADJUDGED that this Judgment of Divorce may be amended to

conform to the term of a Qualified Domestic Relations Order, as the Plan Administrator may require.

COBRA

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant shall keep the Plaintiff insured under his health care plan, for medical, dental and optical, through his employment, for a period of three years from the date of this Judgment, under COBRA benefits, and Plaintiff shall pay for the cost of her insurance coverage afforded through Defendant's employer.

RECORDATION OF JUDGMENT OF DIVORCE

IT IS FURTHER ORDERED AND ADJUDGED that each party shall execute, acknowledge and deliver to the opposite party as and when required, any and all deeds, assignments, insurance applications and or other instruments of release, assurance, transfer or conveyance required in order to effectuate the terms and provision of this Judgment of Divorce. In the event either party shall fail, refuse, or neglect to execute, acknowledge and deliver any instrument required in order to implement the terms of this Judgment of Divorce, said Judgment of Divorce shall be self-executing and shall stand In the place and in the stead of any such instruments required arid a certified copy of this Judgment of Divorce may be recorded in any office of the Register of Deeds, Secretary of State, or other public office and

shall have the same force and effect as if such instrument had been executed.

INHERITANCE OR OTHER PROCEEDS

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided herein, neither party is obligated to pay to the other party any monies or proceeds which have been or will be received from any inheritance gifts, trust, lottery winnings, lawsuits, settlement or property, personal injury claims or eminent domain awards; and all rights, claims and demands of the Plaintiff against the Defendant and the Defendant against the Plaintiff in and to such monies and proceeds are waived, released, and forever barred.

COMPLETE ADJUDICATION OF PROPERTY RIGHTS

IT IS FURTHER ORDERED AND ADJUDGED that the above provisions with regard to property settlement are in complete adjudication of the property rights of the parties whether or not the property interests are specifically outlined herein; further, that the division of real and personal property, as set forth herein, is deemed to be fair and equitable.

MUTUAL RELEASE

IT IS FURTHER ORDERED AND ADJUDGED

that the property division provisions of the Judgment of Divorce fully satisfy all claims that either party may have against the other, except for the obligations and reservations contained in it.

IT IS FURTHER ORDERED AND ADJUDGED that each party, except as otherwise provided in the Judgment of Divorce, releases the other from all claims, liabilities, debts, obligations, actions and causes of action of every kind that have been incurred to the date hereof, whether known or unknown. However, neither party is relieved or discharged from any obligation arising under the Judgment of Divorce or under any instrument or document executed pursuant to the Judgment of Divorce or on or after the date hereof.

COMPLETE SETTLEMENT

IT IS FURTHER ORDERED AND ADJUDGED that except as otherwise provided herein, the Plaintiff and Defendant shall and do hereby mutually release, acquit and forever discharge each other from all actions, debts, claims, demands and obligations whatsoever both in law and in equity which either of them ever had, now has, or may hereafter have against the other party, upon or by reason of any damages, claim, act or cause which occurred prior to the filing of this Judgment of Divorce including, but not limited to, any injuries or damages which resulted from any accident, assault, assault and battery, or infliction of disease or illness.

RESTORATION OF MAIDEN NAME

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff may have the name of Kulpinski restored to her.

TERMINATION OF ATTORNEY OBLIGATION

IT IS FURTHER ORDERED AND ADJUDGED that the obligations of counsel to their respective clients in this matter shall terminate upon entry of this Judgment.

DECREE BECOMES FINAL

IT IS FURTHER ORDERED AND ADJUDGED that this Judgment shall become final upon the date of filing with the office of the Jackson County Clerk.

CONTINUING JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain ongoing jurisdiction under the terms and provisions of this Judgment of Divorce. Any modification or alteration sought shall be conducted before this Court and the above named Judge or their successor.

ENFORCEMENT OF ATTORNEY FEES IN JUDGMENT

IT IS FURTHER ORDERED AND ADJUDGED that should either party take steps to enforce this Judgment of Divorce In the event of a default by the other party, the non-prevailing party shall pay the costs and actual attorney fees Incurred *by* the prevailing party in enforcing this Judgment of Divorce.

ATTORNEY FEES

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff and Defendant are both responsible their own attorney fees incurred in this matter,

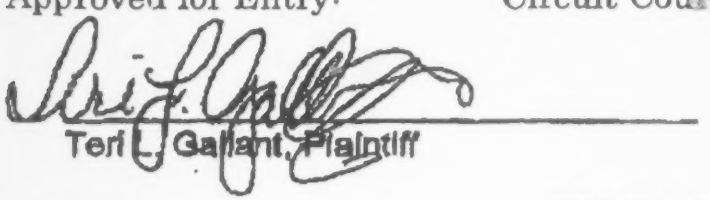
DISCLOSURE

IT IS FURTHER ORDERED AND ADJUDGED that in signing this Judgment of Divorce, the Plaintiff, Teri L. Gallant, and the Defendant, Jon A. Gallant, *Jr.*, verify they have read and understand its provisions and approve its substance and form.

IT IS FURTHER ORDERED AND. ADJUDGED that to the best of the parties' knowledge, they have fully disclosed all assets In which they have any ownership interest, and this Judgment of Divorce distributes all the assets and only those assets that we have disclosed to each other.

Dated: _____ Hon. John G. McBain
P47476

Approved for Entry: Circuit Court Judge



Jon A. Gallant, Jr., Defendant

TRUE COPY OF
ORIGINAL FILE

JAN 0 6 2005
Jackson County
Circuit Court
Sandra Crowley,
Co. Clerk

William G. Rappleye P41592
Attorney for Defendant

Jackson County
Friend of the Court

Prepared by:
Philip B. Navarre P38819
Navarre & Navarre, Lawyers, PLC
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Jackson, Michigan 49201
(517) 787-1300

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
FAMILY DIVISION

TERI LYNN GALLANT, Plaintiff, File No. 03-002034-DM
HON. JOHN G. MCBAIN

V

JON ANDREW GALLANT, JR., Defendant.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER DIVORCE TRIAL

STATEMENT OF FACTS

The parties in this case were married on March 13, 1981. This marriage lasted for 23½ years and produced six (6) children. Three of those children

are under the age of 18.

Prior to the commencement of trial, the parties reached agreement on legal and physical custody and a parenting time agreement. The parties also reached an agreement that Defendant would pay $800.00 per month in child support. This figure was reached by the consent of the parties as part of their negotiations concerning custody and parenting time. This amount of $800.00 per month in child support was not based on the parties' established earnings presented at trial and calculated pursuant to the Michigan Child Support Guidelines. This amount, however, does exceed the guidelines based on the parties' income information submitted at trial.

The parties and the children have resided at the marital home located at 2800 Leland Drive, Summit Township, In Jackson County, Michigan. Plaintiff-mother is now residing in the marital home. The Defendant-father has vacated the marital home by agreement of the parties.

The Plaintiff-mother is forty-three (43) years of age. She had a very limited work history during the marriage. She did some custom interior painting jobs. Although most of these were for family and friends.

During the pendency of the marriage, she worked part-time at a tanning salon. She graduated from high school and is considering additional college

training.

Throughout most of the parties' marriage, the Plaintiff-mother stayed at home and raised the children while Defendant-father ran the family business.

The Defendant-father is forty-nine (49) years of age. He graduated from high school and completed 3 years of college. He left college early to create and operate a closely held family business venture with his father as a fifty percent partner.

The parties have a complicated marital estate, which will be addressed in this opinion.

FINDINGS

Based on the testimony at trial, the Court finds that the allegations in the Plaintiff-mother's Complaint for Divorce were true at the time they were filed, and that they continue to be true.

Moreover, the Court finds that there has been a breakdown of the marriage relationship, such that the objects of the marriage can no longer be preserved.

The Court also finds that there is no reasonable likelihood of marital reconciliation. The parties previously reached an agreement of legal and physical custody and parenting time,

ISSUES TO BE DETERMINED BY THE COURT:

1. Division of marital assets.
2. Division of marital debt
3. Division of personal property
4. Spousal support
5. Attorney fees

THE LAW

The division of marital assets is controlled by statute MCL 552.1 et seq; Charleton v. Charlatan, 397 Mich 84, 92; 243 NW2d 261 (1976). When apportioning the marital estate, the Court must strive for an equitable division of the assets. In Sparks v. Sparks, 440 Mich 141, 159-160; 485 NW2d 893 (1992), our Supreme Court outlined the factors that a trial court should consider when dividing marital assets:

1. duration of the marriage
2. contributions of the parties to the marital estate
3. age of the parties
4. health of the parties
5. life status of the parties
6. necessities and circumstances of the parties
7. earning ability of the parties
8. past relations and conduct of the parties
9. general principles of equity

Moreover, in analyzing these factors, the Court held that: "The trial court is given broad discretion in fashioning its dispositional ruling, and there can be

no strict mathematical formulations; while the division need not be equal, it must be equitable." Id. At 158-159.

A. MARITAL NOME

The marital home of the parties is located at 2800 Leland Drive, Summit . Township in Jackson County, Michigan. The Plaintiff-mother continues to reside in the marital home with several of the parties' minor children. Patrick Hoxie, a state licensed and certified real estate appraiser estimated that the marital home has a value of $192,000.00. The current mortgage debt on the property is $46,131.00, leaving a net equity $145,869.00. Mr. Hoxie valued this property by using the market approach as opposed to a comparable sales approach. While Plaintiff's counsel is critical of this estimate, no other appraisal of this property was offered, and the Court found it to be reasonable.

The Court finds that the Sparks factors (1), (2), (3), (5), (6), (7), (9) to be determinative in its analysis. Based on these factors, the Court holds that the Plaintiff-mother should receive the marital home and all of the equity in it. Factor number six (6), the necessities and the circumstances of the parties was especially important to the Court. The Plaintiff continues to reside in the home. It is the family home to the parties' children.

With the significant equity in the marital

home, the Plaintiff's mortgage payments will be reasonable and her continuity in the home seems equitable under the circumstances.

Therefore, the Defendant shall execute a Quit Claim Deed to the property. Plaintiff shall re-finance the home within 60 days from the entry of the Judgment of Divorce.

The Plaintiff shall also receive all of the contents, furnishings and appliances In the marital home.

The Plaintiff shall be responsible for all future mortgage payments, insurance, taxes, and other expenses associated with this property after the Judgment of Divorce is entered.

8. GALLANT INDUSTRIAL SERVICES

The Defendant started Gallant Industrial Services in 1976. According to his testimony at trial, he left college after three years to begin this business. He testified that the purpose of Gallant Industrial Services was to provide "expedited transport services".

The Defendant testified that in 1976, the trucking industry was heavily regulated, requiring both state and federal licenses to engage In commercial operations. The business began to gradually grow. In 1978, Gallant Industrial Services

was incorporated and the Defendant was joined in the business by his father as a partner.

During this time from 1976 – 1978, the Defendant became involved in fluid management operations and developed into the exclusive distributor in Michigan for an industrial fluid, which was sold to businesses to reduce their manufacturing costs. Over time, Gallant Industrial Services specialized in fluid management as an outsource for other businesses.

According to the Defendant's testimony, between 1976 and through the mid-1980's, Gallant Industrial Services had separate business operations in both fluid management and transportation. During this time frame, the business grew and was successful.

Defendant testified that after the early 1980's, Gallant Industrial Services had some very profitable years, and other years where the business struggled. One of the major factors that Impacted the profitability of Gallant Industrial Services and Gallant Transport, Inc., was the deregulation of the trucking business, which greatly enhanced competition and reduced earlier historic profits.

Another factor was a diminished role In trucking operations to a changing and restructuring automotive business in Michigan. Given these developments, Defendant's expert, Dr. William King, testified that Gallant Industrial Services has little

value today, and is not likely to return to the financial prosperity it enjoyed in earlier years.

While Dr. King opined that Gallant Industrial Services has little value in a current appraisal, he attached a value to its current state of operations at $20,000.00.

The Plaintiff's expert, Edward Dupke, gave Gallant Industrial Services a current appraisal of zero.

Under cross-examination, if you considered debt, loans, and other operating expenses, Gallant Industrial Services could even have a negative value. The Court finds that, in balancing the experts' value of zero and $20,000,00, that a reasonable value of Gallant Industrial Services is $10,000.00.

C. GALLANT TRANSPORT, INC.

In valuing Gallant Transport, Inc., Dr. King applied various business valuation methods, and opined that it had a value of $185,670.00. The Plaintiff's expert, Mr. Dupke, opined that Gallant Transport, Inc., had a market value of $244,000.00. Dr. King agreed that this figure was reasonable, as was his appraisal. Experts from both parties place the fair market value of Gallant Transport, Inc., between $185,670.00 and $244,000.00. An average between these two is $214,835.00.

The Court finds the average between the two experts' appraisals at $214,835.00 as a reasonable determination of the fair market value of Gallant Transport, Inc.

After considering the other methods of valuation testified to by both experts, the Court finds the fair market valueof.$214,835.00 as the most reliable evaluation of Gallant Transport. Inc.

Based on the fluctuation in the value of Gallant Transport, Inc., and Gallant Industrial Services over the. years during the marriage, the Court believes it would be inequitable to arbitrarily apportion a value of these t[w]o business entities as a premarital interest offset to the Defendant.

In his brief, Defendant argues that a 30% value should be placed on the Defendant's premarital interest, resulting in Gallant Transport, Inc., having an adjusted marital value of $150,384.50. ($214,835.00 – 30%)

The Court finds this 30% premarital interest adjustment to be arbitrary and unequitable under the circumstances. Especially since there has been a huge fluctuation in the value of the company in the 1980's to its much lessened appraisal today.

Even if there was an ascertainable premarital interest of the Defendant in Gallant Transport, Inc,, case law holds that separate property may also be

divided on the basis of contribution. Where a party contributed to the "acquisition, improvement or accumulation of the property, the Court may award the party a share of the other's separate estate." Hannaway v. Hannaway, 208 Mich [App] 278; 528 NW2d 792 (1995).

The Court concluded that Sparks factors (1), (2), (3), (4), (5), (6), (7), and (9) to be determinative in its analysis. Based on the duration of the marriage and the significant contributions of the Plaintiff's staying at home, maintaining the marital home so the Defendant could run the business, it seems inequitable to try and apportion a premarital value allocation of the business as argued by the Defendant.

D. J & J REAL ESTATE

J & J Real Estate is also part of the marital estate. Its principal asset is the business property located at 3519 Wayland Drive, Jackson, Michigan.

This building was purchased pursuant to a partnership between the Defendant and his father. As a result, fifty percent (50%) of the value of this property would be a marital asset.

Plaintiff's expert, Mr. Dupke, concluded the partnership asset had a value of $404,000.00. The Court did not find this income driven appraisal as reasonable. Mr..Dupke relied in reaching this.figure on the opinion of the Plaintiffs real estate appraiser,

The Court did not find the manufacturing comparables used by Hardwick reliable. By using manufacturing comparables to try and determine the value of a business used for trucking was not a fair comparison. The manufacturing comparables used by Hardwick and. Dupke resulted in a skewed comparison, that over valued the business property at issue.

The Defendant's expert, Patrick Hoxiei, opined that this comparison approach was inappropriate given the lack of similar properties.

The Court concluded, after weighting the testimony of the experts, that a replacement cost analysis of the partnership asset to be the most reliable for a valuation of the partnership asset.

Mr. Hardwick did a similar evaluation, but multiplied square footage by construction costs from an undisclosed journal. However, Mr. Hoxie's opinion went beyond trade journals and was based on a comprehensive analysis of the costs of constructing a replacement partnership asset.

After a research of this approach, Mr. Hoxie opined that the building located at 3519 Wayland Drive, Jackson, Ml, had a current value of $230,000.00. Thc Court found this valuation to be thc most credible and reliable.

Mr. Hoxie testified that the costs of constructing a similar building would be $202,000.00. This figure was based on a calculation using current suppliers and local contractors.

The Defendant testified that the true cash value of the land according to the State of Michigan was $39,204.00.

This resulted in a complete replacement cost of $241,204.00, which the Court found to be the most reliable of the evaluations.

Moreover, Mr. Hoxie also credibly testified that by using a 50% depreciation factor calculated with the age of the 35 year-old building, that the net depreciated building would be $140,204.00. This left Defendant with a fifty percent partnership asset of $70,000.00.

In applying the Sparks factors, the Court considered the following factors applicable: (1), (2), (3), (4), (5), (6), (7), (8), and (9). All were relevant to the Court in determining the division of the business aspects of the marriage.

In dividing the business interest of the marital estate, the Court finds that factor (7), the earning ability of the parties, to be the most determinative factor. Gallant Industrial Services, Gallant Transport, Inc., and J & J Real Estate are essentially

all the components of a closely held family business in which the parties have a fifty percent interest as part of the marital estate.

As a closely held family business, the components realistically cannot be severed and sold on the open market. Defendant's income earning ability in the future w111 be predicated on leaving the marital business assets intact.

Defendant's expert, Mr. King, also testified that if the business assets were dissolved and liquidated,, then Mr. Gallant's future income earning ability would be compromised, as would the source of the $800.00 in child support per month he has already agreed to.

In dividing the marital assets, the Court believes it equitable to award Defendant all of the marital interest in Gallant Industrial Services, Gallant Transport, Inc., and J & J Real Estate.

To achieve an equitable distribution, the Court has the ability to offset this award of marital assets to the Defendant by allowing the Plaintiff a corresponding offset of the 401K pension plan, and in the equity in the marital home.

The Court also heard testimony that Gallant industries had several pontoons that were used for purposes of business entertaining. While arguably Defendant would have a fifty percent interest in

these business interests, the Court is awarding this to the Defendant. The Court notes the value in these used pontoons was offset by Plaintiff receiving the vast majority of the furnishings of the marital home. With no specific values on either the used pontoons or the value of the furnishings of the marital home, the Court considers this an equitable offset.

E. 401K

Included for the division in the marital estate is Defendant's 401 K Profit Sharing Plan which, as of July 12, 2004, had a value of $488,787.62.

Therefore, the marital estate is divided as follows: Plaintiff-mother
1. $145,869.00 (net equity in marital home)
2. 318,876.81 (distributive equitable share of 401K)
$464,745.81

Defendant-father
1. $ 10,000.00 (Gallant Industrial Services)
2. 214,835.00 (Gallant Transport, Inc.)
3. 70 000.00 (J & J Real Estate)
$294,835.00 (net partnership marital interest total)
4. 169,910.81 (adjusted interest in 401K)
$464,745.81

The Court notes that defendant's 401K Profit Sharing Plan was valued as of July 12, 2004. Pursuant to the Court's distribution of the 401K

based on these numbers, Plaintiff-mother should receive $318,876.81. Defendant-father shall receive $169,910.81 of the,401K Any remaining 401K value after the aforementioned distribution, based on an increase in valuation since July 12, 2004, shall go to the Plaintiff-mother.

F. INVESTMENT ACCOUNTS

The Plaintiff submitted statements regarding the Smith-Barney Investment Accounts. The Court recalls granting authority of the parties to deplete these marital assets for the purpose of paying experts and for meeting the parties monthly household expenses. As of the date of trial, these accounts had zero balances have been equitably divided.

The Court finds that the remaining Smith-Barney IRA in the amount of $11,000.00 is a premarital asset and is awarded to the Defendant as his separate property.

G. MARITAL DEBT

Each party shall be responsible for any debt incurred in their own name since the filing of the Complaint for Divorce. Any other marital debt not discussed in other provisions of this opinion shall be split equally, by the parties. Each party shall keep the vehicle in their possession and shall be responsible for. the payment on it, and have it

refinanced in their own name within 60 days after the entry of the Judgment of Divorce.

H. DIVISION OF PERSONAL PROPERTY

The parties had largely distributed the personal property before the trial in this matter. Each party shall receive the personal property currently in their possession as of the date of this order.

I. ATTORNEY FEES

The Court denies awarding. attorney fees to either party, as costs were addressed during the pendency of this action. Each party shall be responsible for attorney fees incurred in this matter.

J. SPOUSAL SUPPORT

The Plaintiff-mother. in this matter: has made a claim for spousal support. In Thames, v. Thames, 191 Mich App 299, 308; 477 NW2d 496 (1991), the Court set forth the factors that a trial court should consider when deciding whether to award spousal support:

(1) the past relations and conduct of the parties
(2) the length. of the marriage
(3) the abilities of the parties to work
(4) the source and amount of property awarded to the parties
(5) the parties' ages

(6) the abilities of the parties to pay alimony
(7) the present situation of the parties
(8) the needs of the parties
(9) the parties health
(10) the prior standard of living of the parties and whether either is responsible for the support of others
(11) contributions of the parties to the joint estate, and
(12) general principles of equity.

In addition, the Court may consider a party's fault in causing the divorce.

The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party. Moore v. Moore, 242 Mich App 852, 654; 819 NW2d 723 (2000). The trial court should base its award of spousal support on what is just and reasonable under the circumstances. Id.

Plaintiff submitted a spousal support work-up to the Court. One problem with this calculation is Defendant's income. Testimony at trial indicates that Defendant receives a $500.00 weekly salary from Gallant Industrial Services. In addition to this salary, the Defendant receives, once a year, one-half of the net rental proceeds from J & J Real Estate.

According to the evidence, in 2002, Defendant had W-2 earnings of $25,000.00 from Gallant Industrial Services, and an additional $6,288.00 for

interest income, for a total of $32,623.00. In 2003, Defendant had a total income of $16,000.00 in wages from Gallant Industrial Services and rental income of $10,328.00 for a total of $26,326.00,

Defendant offered the Craig Ross Program, 2003, which placed the Plaintiff at $10,000,00 annually, which also included $800.00 monthly child support. Defendant was calculated at an annual salary of $32,000.00. The Ross Program, utilizing these figures, suggests a zero alimony award.

The Plaintiff and Defendant offer contrasting positions of spousal support. In analyzing the facts of this case, the Court is not unmindful that the Defendant has authority to increase his income and, based on past earnings, it is persuasive that 2002 and 2003 do not properly consider an unexercised ability to earn income at a level consistent with compensation he received in earlier years.

To resolve this. the Court examined the Thames factors

Past Relations and Conduct of the Parties

The Plaintiff argued that the Defendant is somewhat more at fault for the breakdown in the marriage due to his conduct during the marriage. The. Court did not find this supported by the evidence at trial and does not find that this factor favors either party.

Length of the .Marriage

This is a twenty-three and one-half year marriage, which produced six children. As previously noted, the Plaintiff has had minimal employment during the marriage. She did this to allow Defendant to direct his energies in supporting the family financially. In Denman v. Denman, 195 Mich App 109; 489 NW2d 161 (1992) spousal support was awarded in a twenty-three (23) year marriage. The Court finds that this factor favors the Plaintiff.

Ability to Work

In determining spousal support, an important factor is the ability of each party to financially support themselves. With the distribution of marital business assets awarded to the Defendant, it is contemplated that his ability to work and support himself is established. The Court reviewed his W-2's for both 2002 and 2003, as previously discussed.

The Plaintiff-mother, however, has had very little work experience outside of the marriage. She is currently working part-time at a tanning salon at an hourly wage barely above minimum wage. Therefore, the Plaintiff's ability to support herself based on past work experience and current work skills is limited. The Plaintiff would like to go back to college to gain the ability to work at a level where she could more effectively support herself. Plaintiff presents an

effective argument for short-term rehabilitative alimony while Plaintiff goes back to college. Plaintiff argues persuasively that a spousal support award should be sufficient enough so that she will not be required to dissipate her property award and marital assets to meet her daily needs while acquiring new job skills. McClain v. McClain, 108 Mich App 166; 310 NW2d 316 (1981). The Court finds that this factor strongly favors the Plaintiff-mother.

Source and Amount of Property Awarded

Property awards given to each party have been considered in determining whether to award spousal support. The Court is not unmindful that it has awarded significant marital assets to the Plaintiff-mother in this order in apportioning the marital assets. However, in Hannaway v. Hannaway, 208 Mich App 278; 527, NW,2d 7920995), the Court held that, the income producing potential of the wife's property settlement, not its overall value, should be considered in evaluating her claim for spousal support. The Court finds that this factor favors the Plaintiff-mother.

Age of the Parties

Age Is elector in determining spousal support issues, especially as it impacts on a parties' ability to support themselves.

The Defendant is (49) years old and is in an

established family business with years of experience in the workplace. Plaintiff-mother is (43) years old, a mother of six children, with three children under the age of 18. She has spent most of her 23 1/2 married years staying at home with the children and managing the home so the Defendant-father could concentrate on the business, which accounted for the vast majority of the marital income. This factor favors the Plaintiff-mother.

Ability to Pay

The ability to pay spousal support includes the unexercised ability to earn income, if a party voluntarily reduced their income level to avoid paying spousal support. Knowles v. Knowles, 185 Mich App 497, 462 NW2d 777 (1970). The Court finds that the Defendant has an ability to pay child support and could even increase his level of partnership contribution. There is also the issue as to whether Defendant has an unexercised ability to earn a higher level of income. The Court finds that this factor favors the Plaintiff-mother.

Present Situation

The Court considered the parties' present situation and the fact that the Defendant agreed to pay $800.00 in child support.

Need

The Court also considered the unique need of

the Plaintiff-mother for spousal support. This is based on her limited employment history and an inability to earn a sufficient income without further education or job skills. This factor favors the Plaintiff-mother.

Health of the Parties

The Court finds that both of the parties have good physical and, mental health. This factor does not favor either party.

Prior Standard of Living

The..Court considered the parties' prior standard of living before the divorce. The Plaintiff-mother argues that she is entitled to spousal support necessary to insure that she is not deprived of her right to support at a level commensurate with what she would have enjoyed had the marriage survived. Denman v. Denman, 195 Mich App 109 (1992). The Court finds this factor favors the Plaintiff-mother.

General Principles of Equitv

Based on all of the factors discussed above, and based on equitable considerations, the Court awards Plaintiff-mother spousal support in the amount of $700.00 per month for the next five (5) years. The Court finds that five years is an appropriate term to help the Plaintiff acquire additional job training and/or college to enhance her

ability to make a more sufficient income. Under the circumstances of this case, the Court awards Plaintiff-mother $700.00 per month in rehabilitative alimony for the next five (5) years, after the entry of the Judgment of Divorce.

In order to preserve the Defendant's ability to pay both child support and alimony, the Court awards the Plaintiff-mother one-half of any life insurance policy to which Defendant is currently entitled under the partnership. The Court also requires the Defendant and/or the partnership to keep paying the premiums on both the Defendant's policy and on the policy of the Defendant's father. Defendant is to provide, to Plaintiff, documentation that both one million dollar policies' premiums are paid once a year. If either Defendant or Defendant's father pre-deceases the Plaintiff, then the Plaintiff shall be entitled to one-half of the proceeds of either of the aforementioned insurance polices. Defendant shall not only be responsible for full payment of the premiums on these policies, there also shall be no change of beneficiaries that would contravene this order.

Preparation of Judgment of Divorce

The Court will require Attorney for the Plaintiff to prepare *a* Judgment of Divorce containing all required provisions, accurately reflecting the Court's findings and order within 14 days. All previous orders not inconsistent with this order shall

remain in full force and effect.

IT IS SO ORDERED this 21st day of December, 2004.

John G. McBain
John G. McGain P47476
Circuit Judge/Family Division

Certificate of Mailing:

I hereby certify that a copy of this Findings of Fact and Conclusions of Law was sent to the Friend of the Court and both parties' counsels by ordinary mail and/or personal service this 21st day of December, 2004.

Terry Crawford
Terry Crawford, Judicial Secretary

STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF JACKSON FAMILY DIVISION

TERI O. GALLANT,
Plaintiff,

File No. 03-002034-DM

JON A. GALLANT, JR.,
Defendant.
_____/

TRIAL
BEFORE THE HONORABLE JOHN MCBAIN
Jackson, Michigan

on
September 16, 2004
[Excerpts]

APPEARANCES:
MR. PHILIP NAVARRE, P38819
Appearing on behalf of the Plaintiff.

WILLIAM RAPPLEYE, P41592.
Appearing on behalf of the Defendant.

Roger D. Thome, CSR 2201

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EXHIBITS

Exhibit No.	Offered	Admitted
(Plaintiff's Exhibit 2 Received)		18
(Plaintiff's Exhibit 1 Received)		62
(Plaintiff's Exhibit 9 Received)		75
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[*page 6*]
parties' minor children for the first 3 days following the end of the school year. And, will enjoy parenting time with the parties' minor children for the first 4 days preceding the commencement of the subsequent school year, in either August or September.

The balance of time within the summer vacation from school, the parties will split 50/50 on a weekly basis.

Mrs. Gallant will have the right to have 2 uninterrupted weeks during the summer. Mr. Gallant will have the right to 1 uninterrupted week during the summer.

And it's further my understanding that the Court will calculate child support based on the guidelines. Mr. Gallant has agreed to a minimum level of support for the parties' minor children for child support. He has agreed to a minimal level of support imputing him at 60 thousand dollars per year. If the Court determines that his income is higher than that, the Court may adjust the support guidelines, the support amount accordingly, based on the guidelines.

It's further my understanding that Mr. Gallant will agree to the calculation of support on a hundred and 56 overnights per year. If the Court determines an imputation of income in excess of that 60 thousand dollar level.
[*end of page 6*]

[*page 77*]
belong to the American Society of Appraisers, the Institute of Business Appraisers. I'm an affiliate member of the American Bar Association, and a number of other professional organizations.
Q. And, where are you certified?
A. I'm certified as a certified public accountant in the states of Michigan, Illinois, and Kentucky.
MR. NAVARRE: I would move for admission of Mr. Dupke as an expert in the field of business valuation.
THE COURT: Do you want to voir dire on qualification?
MR. RAPPLEYE: No, we're satisfied.
THE COURT: It will be so admitted. I appreciate you hitting the highlights. Mr. Navarre, proceed forward.
MR. NAVARRE: Thank you.
BY MR. NAVARRE:
Q. Mr. Dupke, what were you engaged to do in this matter?
A. We were engaged to make a determination of the holder's interest value of Gallant Industrial Services, Inc., Gallant Transport, Inc, and 1413 Real Estate.
Q. And, as it relates to a determination of holder's interest value of Gallant Industrial Services, Gallant Transport, Inc., and J&J Real Estate, have you prepared reports?
A. We did.
[*page 77 ends*]

[*page 78*]
Q. Can you explain to the Court what a holder's interest valuation is?
A. Yes, the holder interest actually is a concept that came out of the *Koaleski* (ph) case, which was a Saginaw Circuit Court case in the mid-to the late '80s, and the concept is to distinguish holder's interest from fair market value. Holder's interest is a variant of investment value, which means the value given to a particular individual, given that individual's specific investment criteria and requirements.

In fair market value, in a situation such as we have here, for example, in a 50 percent ownership interest, in a closely held business, we would normally take a discount for lack of control. We would also take a discount for lack of marketability. And when we say marketability, it's not that a company like this is not marketable or saleable, but in fact if you owned a hundred shares of IBM, you could go down to your friendly broker and in 3 days have your cash. With a closely held business that is not possible. So there is a discount for time value of money that is appropriate in those situations.

However, for purposes of equitable distribution in a marital dissolution, those discounts basically within the Michigan courts have been determined to be not
[*end of page 78*]

[*page 79*]
applicable, and these -- the report that we have provided do not reflect any of those types of discounts.

Q. And, have you prepared a report?

A. I have.

Q. I would like to direct your attention first to Gallant Industrial Services, Inc.

A. Yes, sir.

Q. What are the conclusions of that report?

A. Our conclusion was that the value of Gallant Industrial Services was zero.

Q. And, would you describe the work that you did in valuing Gallant Industrial. Services?

A. Yes, sir. Any appraiser who goes through the valuation process will always look at 3 different approaches to value. We always look at the asset approach. We always look at the income approach, and we always look at the market approach.

There are many different methods available to us under those approaches, and a decision may be made by the appraiser to not use all 3 of those methods in any given set of facts and circumstances, but we always consider all 3 in every appraisal, and I did so in the value of Gallant industrial.

I found it very interesting, in looking over the historical financial information of Gallant Industrial,
[*end of page 79*]

[*page 80*]
that up until about 2 years ago, this was a very active and bustling company. For example, in the year ended December 31st, 1999, sales were approximately 1.6 million. In the year ended 2000, 1.8 million. In the year ended '01, 1.4 million. But, then the business, as described to me by Mr. Gallant, when I had an opportunity to visit the site, the plant facility and the offices, and he was gracious enough to grant us an interview, he explained to us that the business suffered a significant reversal with the loss of its major customer, and as a result of that, in the year 2002, sales declined to 4 hundred 45 thousand, and in the year 2003, sales declined further, to 3 hundred 79 thousand.

But, during the bustling days, officers' compensation, in the year 2000, for example, was 3 hundred 50 thousand dollars; officer compensation in the year 2001, was 3 hundred and 40 thousand dollars, but in the year 2003, it was only 32 thousand dollars.

THE COURT: What was the major business account that they lost, Mr. Dupke?

A. It was with Ford Motor.

BY MR. NAVARRE:

Q. Were there other accounts that were major accounts that were lost by -

A. My recollection is, that was the key one that was

[*end of page 80*]

[*page 81*]
identified. There were some others that were lost as well, and my recollection is, that Mr. Gallant shared with me that it was an individual who was formerly a member of the purchasing department at Ford, who went in a competing business, and was successful in taking the business away from Gallant Industrial. I may not have that exactly right, but that's my recollection.

And, in utilizing the market approach, and the asset approach, as well as the income approach, what other. determinations did you make with respect to Gallant Industrial Services?

A. Yes, sir. That information is contained on pages 13, 14, and 15 and 16 of our report. We utilized, or made calculations under the asset approach, and the income approach. We found that the earnings were negative under the current situation, and, therefore, the income approach was inapplicable. We did not find sufficient data under the market approach to utilize that. In other words, we couldn't find sufficient comparable companies to come up with a realistic comparison. And, under the asset approach the tangible value was negative because of the deficit equity of the company. So, our determination under that -- for that particular business, was that the value was zero.

At some time it may return to its former success

[*end of page 81*]

[*page 82*]
but based on the last 2 years of operations, where sales are now down to 25 percent or so of what they were, our conclusion of value as of December 31, of 2003, is that this entity is without value.

Q. And that was the date that you were -- that you assigned for the purpose of valuation?

4. Yes, sir, that's the date that you asked us to do the valuation work as of.

THE COURT: What were the dates?

MR. NAVARRE: December 31, 2003, Your Honor.

A. The most recently completed year end.

THE COURT: Thank you.

BY MR. NAVARRE:

Q. And, you have been provided the financials, and supporting tax documents with respect to that calendar year? Yes. Actually for a 5-year period, Mr. Gallant and his accountants were very helpful in providing that information to us.

Q. And, so you reviewed and analyzed that 5-year period?

A. We did. I would -- let us say we analyzed it, and the only reason I asked to use that, is that "review" for a CPA, is a term of state of art, implying a rendering of an opinion on financial statements, and we did not do that, but we did analyze the information for purposes of valuation.

[*end of page 82*]

[*page 83*]
Q.And, in that analysis you took into consideration all of those years?

A. Yes.

Q. Is there anything further that you wish to add regarding your report concerning Gallant Industrial Services as relates to the conclusions of your report, the preparation of your report, for the work that you performed?

A. Only to comment, sir, that Mr. Gallant shared with us that they're looking for additional opportunities within Gallant Industrial, and that it may return to positive value at some time in the future, but as of the date of our work, we find no value in that particular entity. Moving on to J&J Real Estate --

4. Yes, sir.

Q. -- you were also asked to render valuation for that; is that correct?

A. Yes.

Q. And with respect to the J&J Real Estate, have you prepared a report?

A. Yes.

Q. And, what are the conclusions of that report?

A. We found the value of J&J Real Estate to be 4 hundred and 4 thousand dollars, of which Mr. Gallant's 50 percent would be 2 hundred and 2 thousand dollars.

Q. And again that was valued as of December 31, 2003?

[*end of page 83*]

[*page 95*]
down year, and from the early 1990s almost to the end of 2002, we had 9 good years in a row, and everybody was kind of hoping maybe we'll have one down year and go on, and we had 3 down years, so hopefully we'll get back to the old pattern again, of 3 good ones and one not so good one, but I think during the period of '01,'02, and '03, Gallant Transport suffered as the general economy suffered.

It did pay management fees over to the industrial company, and -- but, clearly it appears this is a business that is coming back. With deregulation of the transportation industry, candidly it's a tough business. I mean, it's not a huge profit business, and so what we find with a lot of companies of this type that have been around a lot of years, and have a pretty decent accumulation of retained earnings, they end up with equity value that is greater than you can justify with a reasonable rate of return on investment. In other words, they're what we call under-performers, and what that means is, if you make a calculation on the income approach, it's going to be less than the calculation that you would arrive at under the asset approach, just because the corporation has been around a long time, and has accumulated a lot of equity, and that is what we found the case to be here; that the earnings just don't justify.

In other words, for the last 3 years, where we
end of page 95]

[*page 96*]
have had kind of lousy business years, the profitability of the company just doesn't justify the asset value that is invested in the company.

Because it's a trucking entity, we were able to find data to do a market approach comparison, and we used several different databases, and these are detailed on page 30 and 31 of our report. We used a database prepared by Dr. Shannon Pratt, called Pratt Stats, and further we used the database provided by the Institute of Business Appraisers, these track transactions, and sort them by SIC, code, SIC being Standard Industrial Classification, which is soon to be replaced by the NAFTA codes.

We did find some comparable transactions. I'm sorry. We did not find comparable transactions here in this particular -- hang on a second. Let me make sure I have the right one. Okay.

I'm sorry. I misspoke. The discussion of this one starts out -- transportation starts on page 22. It's on 22 and 23, and we did in fact find comparable trucking companies with a wide range of sales, and we found the median price to revenue averages under these revenue comparisons at approximately 45 percent.

Now, if you look at the 2.4 million dollars of sales in Gallant Transport, and if you were to multiply it times 45 percent, you have value of approximately a
[*end of page 96*]

[*page 110]

Q. Moving to Gallant Industrial Services, you used the asset approach on Gallant Transport to come up with a positive figure; correct?

A. Yes, sir.

Q. But, you stopped in your analysis in the Gallant Industrial Services and said well, it's negative, so it's nothing; is that correct?

A. That's correct.

Q. Do you know how much negative is negative?

A. Well, according to the balance sheet of the company at December 31 of 2003, as reported in our report, the company had a negative equity of a hundred and 72 thousand 9 hundred and 82 dollars.

Q. When you are valuating these businesses together, can we ignore that figure?

A. A good question. If we were to consider it to be a negative number, then certainly one of the first things we would want to do would be to go to the assets of Industrial, and see if there were any value there separately, which we did not do.

Example: 2 hundred 30 thousand dollars of costs, depreciated down to 16 thousand dollars. Is that 16 thousand dollars a representative number? I'm not sure. We would have to look at that. But, because of the deficit in the equity, and because of the significant

[*end of page 110]

[*page 121]
certainly competent to do all of those calculations, and I have no problem with that. There is a few things we could go through on the balance sheet stuff. But, that's why I stay away from balance sheet valuations, unless it is a holding company where there is real value that you can take out and you can sell that value. Where you use equipment that you are using every day to generate an income, you can't tell the person you have to give up that equipment in order for them to make a living.

Q. So, you did come up with a conclusion as to what your opinion of the value of Gallant Industrial Services was or is?

A. Yes.

Q. As of April --

A. -- 19, 2004.

Q. And that --

A. I found, like Mr. Dupke said, there is really no cash flow to the thing. It's in terrible shape. When I make adjustments for reasonable compensation, I only show income back in 1999, and, you know, I never say any business is worth zero, so I gave it a 20 thousand dollar value, but it has a liquidation value of about a hundred 40 thousand in the hole. So -- but, he was willing to accept a zero value. I would say all businesses have something to it. But, it's just not much.

[*end of page 121]

[*page 122]
Q. Turning to your opinion as to Gallant Transport, then, what method did you use to (inaudible)?
A. What I do is I go to books that I own that tell me what profit margins would be expected in the trucking industry by FIC code, and then I apply those sources that I have footnoted in my pages, as I go through the different parts of revenue, and all of that, and I come up with a capitalized value of what those earnings are.

Revenue 1 and gross revenue number 2 are really based on only gross revenue from Gallant Transport, and do not affect anything that he would have any control over, the underlying numbers of expenses, or anything else, and just simply capitalize that amount.

It's not uncommon in small businesses to have value for the gross revenue models because those always show profitability, and then when I actually apply the discounted earnings, and the discounted future benefits, to have zero value for those for the individual, and then the excess earnings approach, which is an IRS kind of approved thing, but has fallen out of favor quite a bit lately, that says 2 hundred and 51 thousand on it, and when you add them all up, you take an average, and you get a hundred and 85 thousand. Looking at what Mr. Dupke said for the market value that he did at 244, I have no problem with that. I agree entirely, 244 is a reasonable value.
[*end of page 122]

[*page 123]
Q. You have any problems with his value of 8 hundred and 8 thousand?
A. Yes, and that's because of the issue of -- if that's really value there, and you liquidate that, you take away the man's ability to the earn an income, and that's not the purpose of what you want to do when you distribute marital assets.
Q. What is that value if that value was liquidated, in your opinion.
What is there to gain in liquidating that corporation, as Mr. Dupke sees it?
A. Well, he's really -- we didn't talk about a liquidated value, because liquidated values are going to be a whole lot less than asset values. In asset values, you are looking at them generally at the best price you can reasonably expect to get in the market place, like yesterday when we went down that list and we looked at wholesale values for those trailers, and things like that. That wasn't an auction kind of sale where you are just turning over all the assets to the company in one day to be sold off. As he explained it to me, it's sort of like parceling them out over time, where you hold an asset long enough to get a reasonable value for it, and that to me is conflicting with the idea that I'm creating value for a company theoretically because I'm getting rid of it over
[*end of page 123*]

STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF JACKSON FAMILY DIVISION

TERI L. GALLANT,

Plaintiff,

-v- File No. 03-002034DM

JON A. GALLANT, JR.,

Defendant.
_____/

TRIAL
BEFORE THE HONORABLE JOHN MCBAIN
Jackson, Michigan
on

September 17, 2004
[Excerpts]

APPEARANCES:

MR. PHILIP NAVARRE, P38819
Appearing on behalf of the Plaintiff.

WILLIAM RAPPLEYE, P41592
Appearing on behalf of the Defendant.

Roger D. Thome, CSR 2201
ACRO LEGAL SUPPORT SERVICES
(800) 878-ACRO

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any contracts with any businesses?
A. No, we don't. I explained that quite clearly to Mr. King, and to Mr. Dupke at length, and I'm not quite sure that they -- because they're not involved in transportation, don't think they understand what happened since deregulation, and what's really happened since the Y2K issue, where everybody got on the same computer systems. Everything is live bid today. I have no scheduled loads. Going into tomorrow, I have no scheduled loads. But, what happens -- on the Internet, on one site in particular site called (inaudible) National Logistics Management. They're not a customer. They represent all of these shippers, who put out loads, and they have hundreds, and hundreds of trucking companies live bidding that load.

And you pick up A and go to B. So, every single day, your price changes, based on the competition out there, and you got exactly 6 minutes to determine what you are going to bid on that load.

So, it's an exciting business these days, but it's changed completely.
THE COURT: Mr. Gallant, I want to be sure, before I leave, because I'm somewhat challenged maybe like Mr. Rappleye, when it comes to accounting, and economics and that, but if want to discern your testimony now, and I want to be sure I have it right in my mind. You're giving
[*end of page 219*]

[*page 245*]

can continue?

A. It's to do several things: To buy the business out, and to hire and replace and train somebody to take their place. That's what it was designed for, and at the time that, I believe, we got that, back in the '80s, the business probably was worth that.

Q. But, those premiums still continue to be paid?

A. Actually they don't. They're not paid out of the company. They're paid out of the value of the insurance. That's paid up -- we can either pay it, on -- there is an asset there that comes out of it, and we chose it to come out of it.

Q. So --

A. Because we can't afford to pay it.

Q. So (inaudible) paid-up insurance, there is sufficient cash value --

A. In the policy.

Q. -- in the policy itself to pay the premium?

A. That's what we have to do to keep them going.

Q. Do you have any other life insurance?

A. I believe as part of my Blue Cross there is a 25 or 50 thousand dollars, I'm pretty sure.

Q. And you have Blue Cross/Blue Shield that is provided to you as a benefit of the employment?

A. Right now that's who we're using. I don't know. We're

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re-upping here pretty soon, and I don't know what we're going to do, but that's who we currently have.

Q. And, does that cover all the employees of Gallant Transport, Inc.?

A. All. Both companies.

Q. Both companies. And the kids are covered under that, it's a family plan, as well as your wife?

A. Yes. I have actually kept the older daughters on as riders until they can find something. I think I have to take them off because they're no longer in college. I kind of let that go until they catch me, to tell you the truth.

Q. How did you -- how did you come to hire Mr. Hoxie to do the appraisals for 3519 Wayland Drive and 2800 Leland?

A. I opened the phone book, and made some phone calls. I was looking for the guy that could do it the fastest. I called a couple, and some of them said around 4 or 5 weeks, and he could do it in a week, so that's who I hired.

Q. Was price one of the considerations?

A. Yes, it was. That was probably -- I believe he was about 50 or 75 dollars less than the other 2 gentleman. But, most of it was time. I wanted to get it done, and get it in everybody's hands as soon as possible.

THE COURT: And the Blue Cross, the million

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dollar policies, are those whole life?

A. The Blue Cross is not a million dollars. It's either 25 or 50, one of the 2. I'm not sure. Depends of whatever the executive insurance is on Blue Cross.

THE COURT: I wanted to be sure I wasn't confused. There is some testimony about a million dollar face value carried on you and your brother?

A. My dad, as owners.

THE COURT: Is it both you and your dad?

A. The company holds -- actually the company holds the policy.

THE COURT: Okay. What's the face amount of those policies?

A. Well, if I die, how much is it worth?

THE COURT: Yes.

A. I believe it's a million dollars.

THE COURT: And that's term insurance; right, so there is not like a cash value? You pay the premium each time?

A I believe that is what it is.

BY MR. NAVARRE:

Q. You believe those life insurance policies through work are term policies?

A. I believe they're term.

Q. Then, if you are familiar --

[*end of page 247*]

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A. That's what I was going to say, I haven't looked at those in years. If you mean by term, if I die, it's a million dollars; is that right?

Q. Well, that's the face amount of the policy. But if it's building up cash value to the point where that cash value is in fact invested to the extent that it funds and pays the annual premiums, that would not be a term policy.

A. Okay, then, I think that is what it is, then. I think that there is a redeemable value on there. I think there is. It's prepaid insurance, I think, isn't it?

Q. Let me, if I may, approach, and show you a copy of the 1120-S 2002 subchapter S corporate tax return for Gallant Transport, Inc., and then direct your attention to this schedule which is identified as 3 dash 6 on the bottom. I made a mark here on statement 4.

A. Uh-huh.

Q. Form 1120-S, page 4, Schedule L, line 6, other current assets.

A. Yes.

Q. And, it lists cash surrender value, CSV hyphen officers life insurance, and what's the figure?

A. 60 thousand 925.

Q. Okay. And it's your understanding then that that asset is both on your life and on your father's life?

A. Yes, whatever that is in there, is going to be between us,

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[*page 263*]

Q. Mr. Gallant, the directors' insurance is an item on your corporate books; is that correct?

A. Yes.

Q. And, it shows up in both expert evaluations in the valuation of that company?

A. Yes.

Q. So as far as the experts are concerned, they have already taken that dollar amount into consideration?

A. That's correct.

Q. Now, you had -- when we talk about the trailers and the coverage on those, didn't Gallant Transport get into a dispute with the Craft Agency about your insurance coverage at some point?

A. It was huge, yes.

Q. Was it true that Craft was billing you for replacement cost on equipment?

A. That's exactly -- when I said I have been through that. When you insure for replacement, they will not pay for that, even if they are insured for replacement. We found that out the hard way.

Q. You discovered that dispute at some point?

A. Yes.

Q. And that resulted in you saving substantial dollars on your premium.

A. A huge amount of money.

[*end of page 263*]

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law.

I think that the issues are sufficiently complex where I think it would behoove the best interest of both the litigants, the attorneys, and the Court to have each of the attorneys compose their final arguments as to each and every aspect of the law, the economic and business, and retirements, and all of those issues. So, at this point what I would propose is just to waive closing arguments and have each of you submit proposed findings of fact and law.

If you want me -- would a 3 - week period be reasonable?

MR. NAVARRE: Yes, Your Honor.

THE COURT: Mr. Rappleye, is that all right with you?

MR. RAPPLEYE: Yes.

THE COURT: All right. So, Mr. and Mrs. Gallant, I do have to make one finding based on the proofs set forth at the pro con, and since this may well be the last time you are in court together, I just have a couple things I wanted to say.

I will make a finding based on the testimony of Mrs. Gallant, that you just took under oath, there has been a breakdown of the marriage relationship such that the objects of the marriage can no longer be preserved and

[*end of page 277*]

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STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF JACKSON
FAMILY DIVISION

TERI L. GALLANT,
Plaintiff,

File No. 03-002034DM

JON A. GALLANT, JR.,
Defendant.
_____/

MOTIONS
BEFORE THE HONORABLE JOHN MCBAIN
Jackson, Michigan
on
November 24, 2004
[Excerpts]

APPEARANCES:
MR. WILLIAM RAPPLEYE, P41592
Appearing on behalf of the Plaintiff.
MR. PHILIP NAVARRE, P38819
Appearing on behalf of the Defendant.

Roger D. Thome, CSR 2201
ACRO LEGAL SUPPORT SERVICES
(800) 878-ACRO

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important and appropriate for the Court to have an understanding, knowledge, and appreciation of what those were through the trial.

THE COURT: All right. Thank you. All right.

well, I'm going to certainly strike anything in his responsive pleading that is not borne out and supported by evidence during the trial, and I think I have about 2 and a half legal pads full of notes that I took during the trial.

But, I think the Court has some discretion, and normally I try to set guidelines, and I think I did set 3 weeks to try and get the trial briefs in.

You know, so in the future, Mr. Navarre, you know, I need those followed, and I certainly understand why, you know, Mr. Rappleye is here.

But, on the other hand, the Court's is also not unmindful that there were extraordinarily complicated issues in this case on valuing a closely held business, and I'm also not unmindful, I happen to personally know Jean Hoxie, and I know myself she had some medical problems, and there was some delay in getting the transcript.

I can tell you this is the only case I have under advisement, so I waited for these trials briefs to get here so I can begin the process of deliberating, but certainly will not be considering anything, or any attachments thereto that are outside the boundaries of evidence that was admitted.

[*end of page 6*]

[*page 7*]

so, but -- you know, I guess in the future, certainly would expect that when I set, you know, a deadline of a time for, you know, find -- proposed findings of facts and law, they are better adhered to.

Quite frankly the Court has had to wait some period of time before I could begin my process of writing the opinion.

I'm going to allow it, Mr. Rappleye, but I'll exclude anything that I consider on any issue that was not properly raised during the trail. I'll not consider it.

I'll try to have an opinion done now in the next several weeks. I would like to have an opinion done within, hopefully, the next 2 weeks, now that I have both of your briefs.

MR. NAVARRE: Thank you, Your Honor.

(Time: 9:42:39)

[*end of page 7*]

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STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF JACKSON
FAMILY DIVISION

TERI L. GALLANT,
Plaintiff,

File No. 03-002034DM

JON A. GALLANT, JR.,
Defendant.
_____/

MOTIONS
BEFORE THE HONORABLE JOHN MCBAIN
Jackson, Michigan
on
December 22, 2004
[Excerpts]

APPEARANCES:
MR. WILLIAM RAPPLEYE, P41592
Appearing on behalf of the Plaintiff.
MR. PHILIP NAVARRE, P38819
Appearing on behalf of the Defendant.

Roger D. Thome, CSR 2201
ACRO LEGAL SUPPORT SERVICES
(800) 878-ACRO

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***[page 4*]**
on page 8, line item 2, Defendant father Gallant Transport, the figure was 2 hundred 14 thousand 8 hundred 35 dollars, and that I believe reflected a hundred percent of the value that you had determined after trial for the value of Gallant Transport, Inc., and as the record reflected and the testimony also indicated, Mr. Gallant is 50 percent owner of that, so there should be a 1 hundred and 7 thousand 4 hundred and 17 dollar and 50 cent adjustment in that figure.

And, then, accordingly, if it were to balance out, and that was the Court's intent, to balance out, there should also then be a 1 hundred and 7 thousand 4 hundred and 17 dollar and 50 cent adjustment in the 3 hundred and 18 thousand 8 hundred and 76 dollars and 81 cents that the Court award to the Plaintiff mother from the 401-K.

And so I think that that reflects the adjustment, based on our discussion, myself and opposing counsel, as well as Your Honor.

Then, the only other thing that we had discussed regarding clarification was on page 13 of the judgment, the second to the last paragraph, where you had indicated that your intent was that the Plaintiff would be entitled to one half of the proceeds of -- it says "either" but you indicated "both" of the aforementioned insurance policies.

I just wanted to clarify that for the record, and then with that clarification, I'll defer to opposing counsel on his motion to show cause.**[*end of page 4*]**

[*page 5*]

THE COURT: Thanks. I think you correctly gleaned the Court's understanding on both of those matters.

So, Mr. Rappleye, I'll go ahead and consider your motion at this point.

MR. RAPPLEYE: Thank you, Your Honor. Your Honor, as you are well aware, an injunction was issued early ion in this matter, at the request of Mr. Navarre and his client, seeking the freezing of assets, which the Court did.

What that resulted in was a lot of work on our part in coming back to court, freeing up those assets in order to pay off the monthly expenses, to get funds available to maintain the house. We were here repeatedly on trying to and wanting to abide by the order, and work with that order.

After my client -- after the testimony in this matter, Mr. Navarre asked that my client be removed from the home. He said he would leave. He left. He subsequently discovered that when he's making the payments on the line of credit on the house, he's getting notices from the bank that he didn't pay enough. well, she, unbeknownst to him, and us, Mrs. Gallant had gone to the bank and was writing checks off of this account.

Interestingly, at the time of the trial, I think it was stipulated, through counsel, as to what the payoff of the house was, of 46 some odd thousand dollars. That

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Transcript of 4/14/05 **APPENDIX N**

STATE OF MICHIGAN
4TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF JACKSON
FAMILY DIVISION

TERI L. GALLANT,
Plaintiff,
-v- File No. 03-002034DM

JON A. GALLANT, JR.,
Defendant.
_____/

MOTION
BEFORE THE HONORABLE JOHN MCBAIN
Jackson, Michigan
on
April 14, 2005
[Excerpts]

APPEARANCES:
MR. DENNIS HURST, P32409
Appearing on behalf of the Plaintiff.
MS. PATRICIA M. OUELLETTE, P53725
Appearing on behalf of the Defendant.

Roger D. Thome, CSR 2201
ACRO LEGAL SUPPORT SERVICES
(800) 878-ACRO

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settlement. what we could do, maybe we could do some tax indications, or maybe we could allow something for deduction for alimony, increased alimony.

THE COURT: Could I ask you a question?

MS. OUELLETTE: Uh-huh.

THE COURT: So, if we all agree, as I said, Mr. Navarre was certainly a very capable attorney, very skilled, masters in tax law, cites some authority, ironically not objected to in any way by Mr. Rappleye, with the other counsel here, you know, so when I looked at that, and we thought we had these significant corporate life insurance policies, again, is it your position I have to retry the whole case at this point, or merely correct the equitable apportionment of marital assets? we go through all the relevant factors and considerations, because it was clearly my intent, as part of the overall equitable portion of the marital estate, first of all, to try and come up with an amount of alimony that was acceptable and livable within the means of your client, as well as adequately providing for the other party. So, this is the way I see this issue. First of all, I think it's premature to go up to the Court of Appeals, because I don't even have a final opinion and order done, because I specifically reserved on ruling on that issue.

So, I'll make a ruling at this point. I'm going to make a ruling that the court should not have considered

[*end of page 11*]

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those corporate insurance policies as a portionable marital asset. Since I could not properly consider those in effect that the corporation has in effect intervened in this matter, and I think intervened appropriately, so the matter at this time the court cannot properly consider those as marital assets, and at this point I'm going to grant the intervener's request, and what I'm going to do at this point, now, Mr. Hurst, they filed a supplemental brief here with respect to those issues.

Is there any reason I can't give you a week where you could file any response of supplemental or any additional briefs that you want to the court on the limited issue of the court's readdressing the issue?

In particular I'm obviously going to take a look at the totality of the opinion. But, the way I look at it is, proofs are already closed. The proofs are in. Nobody has maintained at any point in time that I should reopen it and allow additional proofs. Would you agree with that?

MR. HURST: I would, Your Honor. But, as long as the court also considers the material that we provided attached to our brief, where Mr. Dupke values the present value of those life insurance policies at 2 hundred 50 thousand dollars. And as long as the court -- I sense what the court is going to do is make a decision on
[*end of page 12*]

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part of the marital asset.

And, at that point if the parties want to go to the Court of Appeals, then I think you have to file an opinion and order, and the court of Appeals can certainly weigh in as to the Court's ruling with respect to my findings of fact, and proposed opinions in this matter.

MR. HURST: Thank you, Your Honor.

THE COURT: So, May 9, I'm not -- and, at this point I'm just going to indicate, on May 9th, if it's filed on May 10, I won't be considering it.

MR. HURST: Your Honor, what about the interim order, the proposed order we submitted as a result of the March 10 hearing?

THE COURT: I'm going to go ahead and review those, and I'm probably going to be entering some type of order, or maybe 1 of the 2 orders.

MR. HURST: That is fine, Your Honor.

THE COURT: And I'm denying leave to appeal on that order.

MR. HURST: Thank you.

THE COURT: May 9, I'll endeavor to have a short opinion, and then you can nicely and cleanly appeal anything the parties want to appeal up to and including the whole final opinion and order, if that's what the parties want to do.

MS. OUELLETTE: Your Honor, I'm in need of clarification, because I'm not understanding. May 9th we're going to have an order, but the
[*end of page 18*]

interim order is going to be before May 9?

THE COURT: I'm anticipating reviewing the proposed orders, and the objections, and in all likelihood I'll enter that order. so, you, at one point requested leave to appeal that; correct?

MS. OUELLETTE: The interlocutory appeal, Your Honor, on the order for my client to pay all bills.

THE COURT: Okay. well, leave to appeal on that matter is denied. So, I'm going to enter that order, and on May 9, whatever additional filings -- if Mr. Hurst wants to raise some arguments or you want to respond to those argument on that one limited issue or asset, on May 9, so if something is filed on May 10, you know, that's the cutoff, May 9. On may 10, I will be in the process of redrafting the entire judgment of divorce, and then at that point in time -- one thing I would recommend to counsel, you have to May 10.

So, obviously I understand that there may be concerns about the order, but it seems to me you might want to sit down and work out all the particulars of the settlement of the case, and subsume the issues within that order as part of the complete settlement. As I told the parties before, it's often my experience, if the two of you can get together and reach an agreement that you think is in the best interest of your children, and you, and carrying on your lives, that's often a lot easier than it is for the Court. I can almost guarantee, as fairly as I

United States Constitution, Article VI, clause 2

(Emphasis added)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.**

The Fourteenth Amendment to the Constitution, Section 1

(Emphasis added)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State **deprive any person of** life, **liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 11 United States Code §727(b)

(a) The court shall grant the debtor a discharge, unless--
(1) the debtor is not an individual;

* * *

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

Title 28 United States Code §1334(a) and (e)

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

* * *

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

26 CFR 1.152-4(d)(3); Treas. Reg. 1.152-4(d)(3)
(pre-2005 version)

A noncustodial parent who provides $1,200 or more support for the child * * * shall be treated as having provided more than half the support for the child (or children) *notwithstanding any provision to the contrary contained in a decree of divorce or separation or in a written agreement,* unless the custodial parent clearly established that the custodial parent provided, in fact, more for the support of the child during the calendar year than the noncustodial parent. Under section 152(e)(2)(B) and this subparagraph, if the noncustodial parent established that the noncustodial parent has provided $1,200 or more for support of the child, then the custodial parent has the burden of establishing by a clear preponderance of the evidence that the custodial parent has provided more for the support of the child than has been established by the noncustodial parent in order to be treated as having provided over half of the support of the child.

Insurance Agency Letter **APPENDIX T**

WALTON

AGENCY

September 19, 2005

Gallant Industrial Services, Jon Gallant, Jr.
3519 Wayland Drive
Jackson, MI 49202

RE: health insurance estimate cost

Dear Mr. Gallant

Please be advised that I am unable to estimate the cost of health insurance for Teri Gallant (Kulpinski) for the remainder of her life. Unfortunately, clue to the many. variables that determine the pricing structure of any insurance policy; but especially health insurance, this is not a possible task.

Additionally, to my knowledge, this would be unattainable.

If you have any questions; please call.

Sincerely,

Paula Golombeski

Paula Golombeski
Employee Benefit Service Agert

cc: Patricia Ouellette

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